

National Building Construction Corporation

Vs

S. Raghunathan and Others

National Building Construction Corporation

Vs

S. P. Singh and Others

Civil Appeals Nos. 4483 and 4484 of 1998

(S. C. Agarwal, S. Saghir Ahmad, M. Srinivasan JJ)

28.08.1998

JUDGMENT

S. SAGHIR AHMAD, J.

1. Leave granted.

2. SLP (C) No. 10372 of 1997 has been filed by the appellant (hereinafter referred to as "NBCC") against the judgment and order dated September 13, 1996 of the Delhi High Court by which CWP No. 1464 of 1992 in which the respondents' prayer for directions to NBCC to pay the foreign allowance @ 125% of the basic pay, as revised by the Fourth Pay Commission, w.e.f. January 1, 1986 while they were still in foreign service in a foreign country, was allowed. Payment of deputation (duty) allowance was also allowed by another order dated July 25, 1997 passed in CM No. 8287 of 1996 filed in the same civil writ. The other SLP, namely, SLP (Civil) No. 20753 of 1997 arises out of CWP No. 472 of 1994 filed by the respondents in that case for the same reliefs. This writ petition has also been allowed by the Delhi High Court by judgment and order dated July 25, 1997 in which the earlier judgments dated September 13, 1996 and July 25, 1997 have been followed. The questions involved in both the appeals are the same with the only difference that in the first petition, there are 11 respondents while in the second, there are 5 out of whom, one is the widow of a deceased respondent.

3. NBCC is a Government of India enterprise (government company) engaged in the business of construction work in India and abroad. In addition to its own permanent workforce, it obtained the services of a personnel drawn from other government departments, including the Central Public Works Department, from where the respondents were brought on deputation for one of the overseas projects being executed by NBCC in Iraq. The respondents joined NBCC on deputation on the basis of certain office orders one of which is the office order dated November 21, 1993 which reads as under :

"The Director General of Works, CPWD, has been pleased to place the services of the following Executive Engineers (Civil) of this Department at the disposal of the National Buildings 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), O/O CE (CDO), New Delhi.
3. Pawan Kumar, EE(C), Bikaner Central Division, Bikaner.
4. K. V. L. N. Rao, EE(C), Flyover Project, New Delhi.
5. G. C. Khattar EE(C), SSW (Construction Zone) CPWD, New Delhi.
6. S. K. Mittal, EO to CE (NDZ), CPWD, New Delhi.
7. S. Ramamurthy, EE(C), Flyover Project, New Delhi.
8. K. John Surgeon, EE(C), Hyderabad Central Division, CPWD Hyderabad.

2. It is certified that but for their deputation to the National Buildings Construction Corporation, New Delhi, these officers would have continued to officiate as Executive Engineers (Civil) in CPWD.

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 the Ministry of Works & Housing vide their UO No. 1445-SF/FW/82 dated December 22, 1982.

# Sd/- Mrs. Neena Garg Dy. Director of Admn."##

4. The terms and conditions of foreign service were contained in a separate document annexed to this office order which provided as under :

"1. The officer will have the option either to draw his grade pay in the Central PWD 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 (Deptt. of Expenditure) No. 10/24/E11(6)/60 dated May 4, 1961, as amended from time to time.

2. Dearness allowance will be regulated at the rates admissible to a 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 travelling 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 the foreign employer according to the rates in force from time to time in accordance with the orders issued by the President under FR 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 travelling allowance on transfer to the foreign service and reversion therefrom shall be regulated under the rules framed by the 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 PWD and end on the day he resumes duty in the Central PWD.

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 Ministry of WH & SOM No. 12016(1)/68-PII dated December 13, 1968, as may be amended from time to time.

15. He will be subject to CGFIS recovery contributions towards CGFIS. May be effected from the deputationist and the amount remitted to the Pay & Accounts Officer concerned."

5. The other office orders were also issued in similar terms. Each of the respondents executed separate and individual contract/employment agreement with NBCC and worked with NBCC for different periods from 1982-83 to 1987-88. Under the service agreement, the respondents were given an option either to draw their salary in the scale of pay admissible to the employees of the Central PWD from time to time together with deputation (duty) allowance or salary in the scale of

pay for the new posts fixed under normal rules in terms of Ministry of Finance (Department of Expenditure) No. 10/24/EII(6)/60 dated May 4, 1961 as amended from time to time.

6. The respondents opted for the Central PWD scale and wanted their salary to be paid to them in that scale as revised from time to time.

7. In order to give effect to the recommendations of the Fourth Pay Commission, the Central Civil Service (Revised Pay) Rules, 1986 were made by the Government of India which provided, inter alia, that revised pay would be payable with effect from January 1, 1986.

8. The pay of the respondents in their parent department, namely, CPWD, was also revised and fixed in the new scales with effect from January 1, 1986 by office order dated January 2, 1991 which related to Respondent 5. Similar orders were issued in respect of all the respondents. It is pointed out that although arrears were paid to other employees, they were not paid to the respondents or the employees who were posted abroad despite their representations. Ultimately, NBCC informed the respondents that in the case of deputationists who were posted on overseas projects and were drawing the pay of their parent department, their cases were under consideration and they would be informed of the decision as and when the same was finally taken.

9. The recommendations of the Fourth Pay Commission allegedly had given rise to some unrest amongst employees of various public sector undertakings who filed a writ petition directly in this Court. The writ petition was disposed of on March 14, 1986 with the direction to the Government of India to appoint a High-powered Committee to look into their grievances. Consequently, the Government of India appointed a High-powered Committee on April 7, 1986 under the Chairmanship of Mr Justice R. B. Mishra, a retired Judge of this Court.

10. The High-powered Committee submitted its report to the Government on November 24, 1988 and by order dated May 3, 1990, this Court directed that the recommendations of the Committee may be implemented.

11. In order to implement the High-powered Committee report, NBCC issued an order dated October 15, 1990 for revision of wages of all its employees posted on overseas projects including those who had joined on deputation. This order was challenged by the respondents directly in this Court in Civil Writ Petition No. 1091 of 1991 but it was dismissed as withdrawn on December 18, 1991 with liberty to approach the High Court. The respondents then filed the writ petition in the High Court claiming the following reliefs :

(i) To issue a writ of mandamus, or a writ order or direction in the nature of mandamus directing the respondent to make payments due to the petitioners from January 1, 1986 till their repatriation to India on the basis a of the CCS (Revised Pay) Rules, 1986 announced by the Government, and in accordance with the terms originally agreed upon at the time of deputation;

(ii) To pass a writ of mandamus, or a writ, order or direction in the nature of mandamus directing the respondent-Corporation to pay duty allowance and DA from the due dates announced by the Government for admissibility of DA from 1982 onwards;

(iii) To issue a writ of mandamus, or a writ, order or direction in the nature of mandamus directing the respondent to effect proportionate increases in HRA, CCA,

other special allowances (like foreign allowance, area allowance, medical allowance, non-practising allowance, food subsidy etc.) and terminal benefits of the petitioners also, as in the case of the deputationists who are posted in India;

(iv) To issue a writ of mandamus, or a writ, order or direction in the nature of mandamus directing the respondent to make the payment of arrears of pay as admissible to the petitioners;

(v) To issue a writ of mandamus, or a writ, order or direction in the nature of mandamus directing the respondent to pay interest @ 18% on the amounts due to the petitioners from January 1, 1986 for the delay committed by the respondents;

(vi) To issue a writ of certiorari, or a writ, order or direction in the nature of certiorari quashing the order dated November 15, 1990 passed by the respondent-Corporation;

(vii) To grant cost of the petition; and

(viii) To pass such other order or orders, as may be deemed fit and proper in the facts of the present case.

12. In this writ petition, a statement was given by the counsel for NBCC on October 30, 1992 that the claim of the respondents was not disputed but the payment could not be made to them on account of the embargo put up by the United Nations and that the Government of India had approached the United Nations authorities for lifting the embargo. On February 15, 1993, another statement was given by the counsel for NBCC before the High Court that NBCC had applied for loan to make payment to the employees who had worked in Iraq and who were entitled to be paid on the basis of the Fourth Pay Commission Report. Consequently, time was prayed for making the payment.

13. On the basis of these two statements of the counsel for NBCC, the writ petition was disposed of on July 21, 1993 by issuing a direction to NBCC to make payment to the respondents within eight weeks. NBCC, however, filed a review application before the High Court on the ground that the statements of the counsel made before it do not correctly reflect their stand but the High Court dismissed the review application on November 12, 1993. It was against this order that NBCC filed special leave petitions before this Court. Leave was granted and the two Civil Appeals Nos. 7113 and 7114 of 1995 were disposed of by this Court on August 4, 1995. The appeals were allowed and the order dated July 21, 1992 passed by the High Court was set aside. The writ petitions were directed to be restored for being disposed of on merits.

14. The High Court by the impugned judgment dated September 13, 1996 and July 25, 1997 disposed of both the petitions and it is its direction to NBCC to pay foreign allowance @ 125% on the revised basic pay with effect from January 1, 1986 which is the only contentious issue between the parties in these appeals.

15. Shri Altaf Ahmed, Additional Solicitor General, appearing on behalf of NBCC, has contended that the claim of the respondents could not have been legally allowed by the High Court merely on the basis of "legitimate expectation" particularly when it has been found, as a fact, by the High Court itself that foreign allowance was not covered by the terms of the contract which contemplated only a deputation (duty) allowance. It is also contended that NBCC had taken a policy decision that

foreign allowance will be payable only on the basis of pre-revised basic pay and not on the basis of basic pay as revised in terms of the recommendations of the Fourth Pay Commission and, therefore, the doctrine of "legitimate expectation" stood excluded. Moreover, the High-powered Committee had not, it is further contended, recommended any increase in the foreign allowance and had, on the contrary, followed the principle contained in FR 51(2) in respect of perquisites and, therefore, the residuary perks as also their quantum was left to the discretion of the Corporation and it was for the Corporation to allow or not to allow any of the residuary perks. It is also pointed out that the doctrine of "legitimate expectation" was not pleaded in the writ petition and no foundation was laid for applying this doctrine to the facts of the present case and, therefore, it was not open to the High Court to entertain this plea at the stage of arguments and to decide the question on that basis.

16. Learned counsel for the respondents contended that NBCC was paying foreign allowance to the respondents @ 125% of their basic pay and since after the recommendations of the Fourth Pay Commission, NBCC itself had decided to increase certain allowances on the basis of revised pay, it could not deny such increase in respect of foreign allowance. Freezing of foreign allowance on pre-revised basic pay was arbitrary and consequently the High Court was justified in holding it to be illegal. It is pointed out that when the respondents were sent to Iraq, the foreign allowance payable to them was linked to their basic pay and, therefore, it was not open to NBCC to freeze the foreign allowance on the pre-revised basic pay even after the implementation of the recommendations of the Fourth Pay Commission by which all other allowances stood payable, according to the own decision of NBCC, on the basis of revised basic pay. There was, therefore, no rationale or reasonable basis for rejecting any such increase in respect of foreign allowance.

17. From the facts set out above and those pleaded before the High Court, it will be seen that foreign allowance was not a part of the agreement between the respondents and NBCC. The respondents were inducted into a NBCC on deputation and, therefore, NBCC had agreed to pay them the deputation (duty) allowance. As pointed out earlier, with regard to this allowance or, for that matter, any other allowance, there is no dispute between the parties involved in this petition and the only question with which we are concerned in this petition is the payment of foreign allowance payable at the rate of 125% of the revised basic pay. The further question is whether the High Court merely on the basis of the doctrine of "legitimate expectation" was justified in allowing the claim of the respondents ?

18. The doctrine of "legitimate expectation" has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without any iota of abuse of discretion. The policy statements cannot be disregarded unfairly or applied] selectively. Unfairness in the form of unreasonableness is akin to violation of natural justice. It was in this context that the doctrine of "legitimate expectation" was evolved which has today become a source of substantive as well as procedural rights. But claims based on "legitimate expectation" have been held to require reliance on representations and resulting detriment to the claimant in the same way as claims based on promissory estoppel.

19. Lord Scarman in *R. v. IRC, ex p Preston* (1985 AC 835 : (1985) 2 ALL ER 327 : (1985) 2 WLR 836, HL) laid down emphatically that unfairness in the purported exercise of power can amount to an abuse or excess of power. Thus the doctrine of "legitimate expectation" has been developed, both in the context of reasonableness and in the context of natural justice.

20. Lord Diplock in *Council of Civil Service Unions v. Minister for the Civil Service* (1985 AC 374

: (1984) 3 ALL ER 935 : (1984) 3 WLR 1174, HL) laid down that the doctrine of "legitimate expectation" can be invoked if the decision which is challenged in the court has some person aggrieved either (a) by altering rights or obligations of that person which are enforceable by or against him in private law; or (b) by depriving him of some benefit or advantage which either (i) he had in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision-maker that it will not be withdrawn without giving him first an opportunity of advancing reasons for contending that it should not be withdrawn.

21. The Indian scenario in the field of "legitimate expectation" is not different. In fact, this Court, in several of its decisions, has explained the doctrine in no uncertain terms.

22. In *Navjyoti Coop. Group Housing Society v. Union of India* ((1992) 4 SCC 477) the decision of the House of Lords in *Council of Civil Service Unions v. Minister for the Civil Service* (1985 AC 374 : (1984) 3 ALL ER 935 : (1984) 3 WLR 1174, HL) was followed and that decision was summarised in the following words : (SCC p. 494, para 15)

"It has been held in the said decision that an aggrieved person was entitled to judicial review if he could show that a 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."

23. This Court further observed as under : (SCC pp. 494-95, paras 15 and 16)

"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.

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It may be indicated here that the doctrine of 'legitimate expectation' imposes in essence a duty on public authority to act fairly by taking into consideration all relevant factors relating to such 'legitimate expectation'. Within the conspectus of fair dealing in case of 'legitimate expectation', the reasonable opportunities to make representation by the parties likely to be affected by any change of consistent past policy, come in."

24. In *Food Corpn. of India v. Kamdhenu Cattle Feed Industries* ((1993) 1 SCC 71) it was held that in all State actions, the State has to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. It was further observed that there is no unfettered discretion in public law and a public authority possesses powers only to use them for public good. It was further observed as under : (SCC p. 76, para 8)

"8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due

weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's a perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner and to this extent."

25. In *Union of India v. Hindustan Development Corpn.* ((1993) 3 SCC 499) the meaning of the words "legitimate expectation" was again considered. Quoting from the case of *Attorney General for New South Wales v. Quin* ((1990) 64 Aust LJR 327) the following lines :

"To strike down the exercise of administrative power solely on the ground of avoiding the disappointment of the legitimate expectations of an individual would be to set the courts adrift on a featureless sea of pragmatism. Moreover, the notion of a legitimate expectation (falling short of a legal right) is too nebulous to form a basis for invalidating the exercise of a power when its exercise otherwise accords with law." the Court observed as under : (SCC p. 549, para 35)

"If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well-known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles. It can be one of the grounds to consider but the court must lift the veil and see whether the decision is violative of these principles warranting interference. It depends very much on the facts and the recognised general principles of administrative law applicable to such facts and the concept of legitimate expectation which is the latest recruit to a long list of concepts fashioned by the courts for the review of administrative action, must be restricted to the general legal limitations applicable and binding the manner of the future exercise of administrative power in a particular case. It follows that the concept of legitimate expectation is 'not the key which unlocks the treasury of natural justice and it ought not to unlock the gates which shuts the court out of review on the merits', particularly when the element of speculation and uncertainty is inherent in that very concept."

26. This doctrine was reiterated in *M.P Oil Extraction v. State of M.P.* ((1997) 7 SCC 592) in which it was also laid down that though the doctrine of "legitimate expectation" is essentially procedural in character and assures fair play in administrative action, it may, in a given situation, be enforced as a substantive right.

27. Applying the principles discussed above in the instant case, it will be seen that foreign allowance was not one of the allowances which was promised to be paid to the respondents at the time of their induction in the a service of NBCC nor had NBCC, at any time, given any assurance to

any of the respondents that this allowance would be payable to them at the revised rate. The agreement or the contract of service, executed between the respondents and the NBCC, does not stipulate payment of foreign allowance to them. Even the High Court has observed that foreign allowance was not one of the allowances mentioned in the terms of deputation. The exact observations of the High Court need to be reproduced here :

"No doubt, foreign allowance is not one of the allowances mentioned in the terms of deputation, but the same is akin to the deputation (duty) allowance referred to in clause (1) of the terms of deputation. When the same was intrinsically linked with the basic pay and in the past there has been corresponding increase on every revision of pay on the same percentage basis, there is no reason forthcoming why the same now stands frozen on the 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. The 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 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."

28. At another place, the High Court has observed as under :

"The petitioners were to be governed by the terms and conditions contained in the order of deputation, a 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 respondent 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 these allowances is concerned, is bad inasmuch as the petitioners legitimately expected that this allowance would stand revised and become payable to them, as in the past, on percentage basis of the revised 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."

29. The above extracts indicate the reasoning and the approach of the High Court. They indicate the precise ground on which the claim of the respondents was allowed. We are constrained to observe that the approach of the High Court was wholly erroneous and the reasoning is equally fallacious.

30. As pointed out by this Court in *Food Corpn. of India v. Kamdhenu Cattle Feed Industries* ((1993) 1 SCC 71) which has already been referred to above, the question whether the expectation

and the claim is reasonable or legitimate is a question of fact in each case. It was also observed that this question had to be determined not according to the claimants' perception but in larger public interest.

31. Incidentally in this case, the question of "legitimate expectation" was not raised in the petition and no foundation was laid in the pleadings for such a plea being advanced before the Court. Strangely, the High Court allowed this plea at the stage of argument and allowed the petitions only on the ground of "legitimate expectation" without the least realising that there was hardly any legitimacy in the claim of the respondents. In the absence of pleading and the affidavit of the respondents in support thereof, the whole exercise done by the High Court cannot but be termed to be speculative.

32. That apart, the High Court suffered from a misconception that whenever there was a revision of the pay scales, foreign allowance as also the other allowances were correspondingly raised on the basis of the revised basic salary. The respondents had served on deputation with the NBCC in their foreign projects at Iraq from 1982-83 to 1986-87 and during this period, the pay structure was revised only once to implement the recommendations of the Fourth Pay Commission. Was there any other revision in the pay structure of the respondents or any of them during their tenure with the NBCC ? If so, when ? To whom was the benefit of such revision available ? Who are those other officers and employees serving on deputation in a foreign country who were benefited by any revision in the pay structure during the period 1982-83 to 1986-87? These are the few questions which legitimately arise, and unless there is material on record to answer these questions the observations of the High Court that whenever there was a revision in the pay scales, foreign allowance was correspondingly increased and, therefore, the respondents had come to entertain "legitimate expectation", are wholly speculative, besides being erroneous.

33. Foreign allowance could also not be treated as a salary component or akin to deputation (duty) allowance as it was in the nature of a residuary perk regulated by the provisions of FR 51(2).

34. Fundamental Rule 51 provides as under :

"51. (1) When a government servant is, with proper sanction, temporarily deputed for duty out of India either in connection with the post held by him in India or in connection with any special duty on which he may temporarily be placed, he may be allowed by the President to draw during the period of deputation the same pay which he would have drawn had he remained on duty in India :

Provided that a government servant, who is placed on deputation while already on leave out of India on average pay, may be required by the President to continue to be on leave, in which case he shall be given during that period, in addition to his leave salary, an honorarium of one-sixth of the pay which he would have drawn had he remained on duty in India; the cost of passages from and to India shall be borne by him.

(2) A government servant on deputation may also be granted a compensatory allowance in a foreign country of such amount as the President may think fit.

(3) The foreign exchange equivalent of the pay, honorarium or compensatory allowance admissible under sub-rule (1) or sub-rule (2) shall be calculated at such

rate of exchange as the President may by order prescribe."

35. Sub-rule (2) of Rule 51 quoted above gives a discretion to the Government to pay to the government servant on deputation in a foreign country, such compensatory allowance as may be thought fit by the President. The payment of compensatory allowance as also the quantum of such allowance is left to the absolute discretion of the President. It was for this reason perhaps that the High-powered Committee did not make any recommendation in respect of foreign allowance and left it to the discretion of NBCC to decide whether it would be payable or not at all, and if payable, at what rate. The Ministry of External Affairs had already fixed foreign allowance under FR 51(2) for its officers and other staff working in its missions abroad. NBCC, therefore, issued the order dated October 15, 1990 specifying the benefits which would be available to its employees and deputationists with effect from January 1, 1986. It was in this order that it was indicated that foreign allowance would continue to be payable at the rate of 125% of the basic pay (pre-revised) as on or up to December 31, 1985. There was thus no increase in the foreign allowance payable to the respondents; nor was the amount reduced in any way.

36. NBCC had taken a policy decision on account of strange situations and conditions prevailing in Iraq where the respondents were deputed on foreign projects assigned to NBCC, that foreign allowance would be payable only on the original basic salary of the respondents and not on the salary as revised on account of the recommendations of the Fourth Pay Commission. In such a situation, the policy decision shall have the effect of displacing the doctrine of "legitimate expectation", particularly as the decision was based on objective assessment of the prevailing circumstances including the financial stringency in which Iraq came to be placed. There is, therefore, no element of arbitrariness in that decision.

37. The respondents were the prisoners of hope. They attempted to water the leaves when the tree itself was found cut off at its roots. This is the least that can be said of this case which had no pleadings and yet the plea prevailed.

38. For the reasons stated above, the appeals are allowed, the judgment and order dated September 13, 1996 and July 25, 1997 passed by the Delhi High Court are set aside and the writ petitions relating to foreign allowance are dismissed, but without any order as to costs.