

# SUPREME COURT OF INDIA

Rameshwar Dayal

Vs.

Indian railway Const.Co. Ltd.

C.A.No.967 of 2007

(G.S. Singhvi and Chandramauli Kr. Prasad JJ.)

17.08.2010

## JUDGEMENT

### **Chandramauli Kr. Prasad, J.**

1. All these appeals arise out of a common judgment dated 14th February, 2006 passed by the Division Bench of the Delhi High Court in LPA Nos.189 of 2000, 289-290 of 2000 and 294 of 2000, whereby the appeals of the appellants have been dismissed and the appeal preferred by the respondent against the common judgment of the learned Single Judge dated 3rd March, 2000 in C.W.Nos.2296, 2297 and 2298 of 1995 has been allowed.

2. Short facts giving rise to the present appeals are that in the month of March, 1982 respondent Indian Railway Construction Company Limited (hereinafter referred to as the 'IRCON') a Government of India Undertaking was awarded two railway projects in Algeria. In June, 1982 the respondent inducted Ranjit Sinha appellant (since deceased) in Civil Appeal No.968 of 2007, a temporary employee of the Council of Scientific Industrial Research as French Translator in the pay scale of Rs.700-1200. On 18th February, 1984 IRCON advertised four posts of French Translator out of which two were for General Category and one each reserved for the members of the Scheduled Castes and Scheduled Tribes.

“Rameshwar Dayal (appellant in Civil Appeal No.967 of 2007) offered his candidature as Scheduled Caste candidate.

Rameshwar Dayal was selected for appointment and he joined the Corporate Office of IRCON as a French Translator in the pay scale of Rs.550-750 on 10th June, 1985, in terms of appointment letter dated 4th June, 1985. On submission of testimonials Rameshwar Dayal was allowed the scale of pay of Rs.700-1200 with effect from 25th July, 1985. Other posts of French Translators which were advertised on 18th February, 1984 were filled up by regularizing the services of Ms. Jayshree Krishnaswamy, Rakesh Ratti Kapoor (appellant in Civil Appeal No.969 of 2007) and

one Ashit Saha. On 4th October, 1985 appellant Rameshwar Dayal and said Ms. Jayashree Krishnaswamy were nominated to be sent to Algeria. Appellant Rameshwar Dayal signed the contract for assignment to Algeria for one year and also signed the Bond to serve the IRCON on his return from Algeria for double the period of his assignment in Algeria, subject to maximum five years. Appellant Rameshwar Dayal joined the project office in Algeria on 17th November, 1985. In the balance-sheet of the profit and loss account and annual report for the year 1986-87 submitted to the Registrar of Companies appellant Rameshwar Dayal was shown as a permanent employee and the emoluments of the employees in Indian Rupees by converting at the rate of exchange prevalent at the end of the financial year. Appellant Rameshwar Dayal realised that he is being paid less emoluments than what he was entitled as per Board Resolution of 1982 and accordingly filed representation but the same did not yield any result.”

3. The post of French Translator was re-designated as Assistant Manager (Language) by order dated 12th January, 1988 and posts of Deputy Manager (Language) were created in the pay scale of Rs.1100-1600. According to the appellant Rameshwar Dayal one of the said two posts of Deputy Manager(Language) ought to have been filled up by a member of the reserved category but without considering his case and de-reserving the posts IRCON promoted two persons, namely, Dr. Ranjit Sinha(appellant in Civil Appeal No.968 of 2007) and Ms. Poonam Bhowmick. Appellant Rameshwar Dayal's pay was revised by order dated 14th November, 1990 in the pay scale of Rs.2000-3500. It is his grievance that his scale of pay ought to have been revised in the pay scale of Rs.2200-4000.

“After the return from Algeria the appellants in all these appeals made a joint representation laying the following claims:

"(a) Fixation of their pay in the pay scale of Rs.2200-4000 instead of Rs.2000-3500, as being given by its sister concern RITES as per Para 8.79 of H.P.P.C. report implemented as per the directions of this Hon'ble Court in Jute Corporation Case;

(b) Appellant's promotion to the reserved post as per reservation policy;

(c) Release of foreign emoluments at the rate of US \$ 1450/- p.m. instead of US \$ 880 to comply with Board of Director's resolution dated 03.03.1982;

(d) Compensation for denying air passage to the appellant as was given to Sh. M.K. Seth;

(e) Further promotion as per rules.”

4. By a separate memo dated 7th June, 1995, IRCON informed the appellants that they were recruited as French Translators when the Company was executing projects in French speaking companies abroad and those projects have come to an end and in view of that it shall not be possible for the IRCON to utilise their services in the area of their specialisation

for which they were recruited. Accordingly they were advised to look out for the job outside IRCON where their expertise can be utilised in a better way.

5. Appellant Rameshwar Dayal, Dr. Ranjit Sinha and Rakesh Ratti Kapoor filed separate writ petitions. Relief sought for by the appellant Ranjit Sinha and Rakesh Ratti Kapoor pertained to quashing of the aforesaid memo dated 7th June, 1995 as also for release of the salary in foreign emoluments at the rate of US \$ 1450 instead of US \$ 880 per month with interest at the rate of 2% per month and to place them in the pay scale of Rs.2200-4000 instead of Rs.2000- 3500. They also prayed for a direction to compensate them for not allowing them free air passages from Algeria to India and back for the period 1989 to 1992. In addition thereto appellant Rameshwar Dayal prayed for direction to consider his case for promotion.

6. During the pendency of the writ petitions Dr. Ranjit Sinha died and appellant Rakesh Ratti Kapoor resigned on 23rd March, 1996 and in that view of the matter the High Court considered their claim along with the claim of appellant Rameshwar Dayal of higher emoluments only and found that the claim made by them is not tenable. The learned Single Judge in this connection observed as follows:

“Therefore, I am unable to accept the submissions of Mr. O.P. Khadaria, the learned counsel for the petitioners, that the respondent/Corporation had committed any illegality or irrationality in fixing the emoluments of the petitioners while they are sent on assignments to Algeria as French Translators.”

So far as the grievance of appellant Rameshwar Dayal in regard to the dispensing with his services is concerned the learned Single Judge held that IRCON is bound to regularise his services.”

7. It seems that the claim for compensation for denying the air passage and promotion being stale, it was not pressed during the course of hearing and the learned Single Judge has not adjudicated issues.

8. Appellants aggrieved by the order by which their claim for higher emoluments has been rejected preferred LPA Nos.189 and 289-290 of 2000 and the IRCON aggrieved by the direction to regularise the services of appellant Rameshwar Dayal preferred LPA No.294 of 2000. The Division Bench of the High Court by a common order dated 14th February, 2006 dismissed the appeals preferred by the appellants against rejection of their claim of higher emoluments but the appeal filed by the IRCON against the direction to regularize the services of appellant Rameshwar Dayal has been allowed and the said direction has been set aside. The Division Bench has not adverted to the other reliefs sought by the writ petitioners.

9. The appellants are before us against the said order.

10. We have heard Mr. O.P. Khadaria, learned counsel for the appellants and Mr. Chetan Sharma, learned Senior Council appearing on behalf of the respondents. Mr. Khadaria has also filed written submissions.

11. Mr. Khadaria points that the Board of Directors of IRCON in its meeting held on 3rd March, 1982 and that of the meeting held on 10th January, 1983 decided to pay remuneration to the employees in Algeria on the basis of the scale of pay they are getting in the IRCON and hence, granting lesser emoluments to the appellant is illegal. We do not find any substance in the submission of Mr. Khadaria and the reliance placed by him on the decisions of the Board of Directors of the IRCON dated 3rd March, 1982 and 10th January, 1983 are misconceived and have no bearing so far as the claim of emoluments is concerned. Undisputedly, emoluments of these appellants were fixed after the aforesaid Resolution of the Board of Directors. Their emoluments therefore shall be governed by the terms and conditions agreed upon. It is relevant here to state that the appellants claim parity with two persons who were sent to Algeria as Chartered Accountant and Engineer (Technical Officers). Appellants were working as French Translators and, therefore, they cannot claim parity on the basis of similarity in the scale of pay when they belong to a different category. As rightly observed by the Division Bench of the High Court that once the appellants have entered into an agreement they cannot go back and claim for higher emoluments. Relevant portion of the judgment of the Division Bench in this regard reads as follows:

“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 Tapedic Unmulan Samiti vs. Babita Rani & Ors.(supra). At any event, as held by the learned Single Judge, the appellant can file a suit for this purpose.”

12. As regards the claim of Rameshwar Dayal for regularisation in service, Mr. Khadaria submits that his performance being satisfactory he cannot be thrown out from service and as such the Division Bench erred in setting aside the direction given by the learned Single Judge for regularising his services. The observation of the learned Single Judge in this connection reads as follows:

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

respondent/Corporation that the performance of the petitioner, Rameshwar Dayal, has not been satisfactory.”

13. However, the Division Bench while setting aside the aforesaid direction observed as follows:

“As regards question of regularization we have already held in Delhi Tapedic Unmulan Samiti vs. Babita Rani & 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 Tapedic Unmulan Samiti vs. Babita Rani & Ors. (supra) and hence we are not repeating the same again.”

14. Mr. Sharma, however, contends that in the absence of any policy or scheme framed by the employer no claim of regularisation can be made. He points out that the IRCON needed the services of the French Translators when it was executing projects in French speaking countries and now that no such project is with it, services of the appellant cannot be regularised.

15. Having appreciated the rival submission, we do not find any substance in the submission of Mr. Khadaria. This appellant was appointed temporarily and excepting the report submitted to the Registrar of Companies, there is nothing on record to show that he was ever made permanent. The service of this appellant as French Translator has been dispensed with as no project in French speaking country is with the IRCON. In the face of it, the action of the IRCON in dispensing with the services of this appellant cannot be said to be illegal or arbitrary.

16. As the High Court has not gone into the claim of the appellants for payment of compensation for denying air passage and claim of promotion of appellant Rameshwar Dayal, we are not inclined to look into these grievances in present appeals.

17. To put the record straight, Mr. Khadaria has referred to a large number of authorities which have no relevance at all to the issues involved in these appeals and accordingly we do not consider it expedient to incorporate the same.

18. In the result, we do not find any merit in these appeals and they are dismissed accordingly, but without any order as to costs.