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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ L.P.A.No.462/2008

% Judgement Reserved on: 15th May, 2014

Judgement pronounced on: 21st July, 2014

K.V.CHANDRASHEKHARAN Appellant
Through: Ms.Mahalakshmi Pavani
and Mr.G.Balaji,
Advocates

versus

UNION OF INDIA AND OTHERS Respondents
Through: Mr.Pawan Upadhyay,
Adv. for R-2 and R-3.

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MS. JUSTICE DEEPA SHARMA

DEEPA SHARMA, J.

JUDGMENT

1. The petitioner had filed the W.P.(C) No.3881/1996 against the present respondents whereby he had demanded the payment of Bhutan Compensatory allowance (in short 'BCA') as per the revised scale vide circular dated 18th March, 1993 vide this

circular the government had increased the BCA with effect from 1.12.1991.

2. The respondents had controverted the demand of the appellant to the revised BCA and raised the preliminary objection about the maintainability of the writ petition on the ground that the respondent was not a State under Article 12 of the Constitution of India.

3. The writ petition was originally dismissed vide order dated 27th May, 1988 holding that the respondent was not a State and the writ petition against the respondent was not maintainable. However, a Division Bench of this court in LPA No.304/1988 had set aside the said order and held that the respondents i.e. Water and Power Consultancy Services (India) Limited (in short 'WAPCOS') was a State and therefore writ petition was maintainable. This order was further challenged and the Supreme Court vide its order dated 22nd June, 1999 in the abovesaid leave petition, set aside the order passed by the Division Bench and remanded the matter back to the learned Single Judge for giving

finding on the question whether WAPCOS is a State or not. The learned Single Judge has held that the WAPCOS is a State vide its order dated 30th May, 2008. The learned Single Judge, however, had rejected the claim of the petitioner regarding payment of revised BCA.

4. Aggrieved by the said order, the present LPA has been filed.

5. There is no challenge to the finding of the learned Single Judge that the respondents are State and thus the writ petition was maintainable. The finding of the learned Single Judge on this issue, thus, attains finality.

6. The brief facts, necessary for the determination of the controversy between the parties, are as under:

7. The appellant was working as Assistant Engineer/Assistant Executive Engineer in Chukha Hydel Project at Bhutan on deputation from Central Water Commission (Ministry of Water Resources, Government of India) from 30.10.1985 to 30.4.1991. He was paid BCA as per the government orders issued by the

Ministry of External Affairs. On 6th April, 1991, the Water and Power Consultancy Services (India) Limited ('WAPCOS') wrote to the General Manager, Chukha Hydel Project, Chimakothi, Bhutan requesting for staff. The letter is reproduced as under:

No. ____/WAP/____ Chukha/91

Dated the 6th April, 1991

To

*The General Manager,
Chukha Hydel Project,
Chimakothi, Bhutan.*

Subject: Requisition for Man Power for posting with WAPCOS.

Dear Sirs,

This is with reference to our discussion with you on 5th April, 91. The detailed requirement of staff by WAPCOS for executing works is being worked out and will be intimated to you for circulation in your organisation in order to ascertain the availability of suitable staff. However, for our immediate requirement, it is requested that the positions may please be circulated amongst surplus staff available with you and a list of willing staff who can be spared immediately be sent to Shri D.K.Sharma, Deputy Chief Engineer, WAPCOS stationed at Phuntsholing.

<i>S.No.</i>	<i>Name of post</i>	<i>Qualification & Experience</i>	<i>Emoluments</i>
1.	<i>Liaison Officer (Tech.) (on deputation)</i>	<i>Degree/Diploma in Civil Engg. with three years experience in the Grade of Asstt.Dir. or equivalent. Experience of Working in Chukha Hydel Project will be desirable. Overall experience of 10 years in Project Investigation and Liaison work.</i>	<i>Existing emoluments drawn shall be protected.</i>
2.	<i>Steno-Typist (on Contract)</i>	<i>Three years experience</i>	<i>Rs.2,500/- (Consolidated)</i>
3.	<i>Peon (on Contract)</i>	<i>8th Class pass</i>	<i>Rs.1,500/- (Consolidated)</i>
4.	<i>Driver (on Contract)</i>	<i>Five year experience of driving all type of Vehicles in hilly areas.</i>	<i>Rs.2,000/- (Consolidated)</i>

The posts indicated at S.Nos.2 to 4 are on contract basis and initially for the period of one year. This term can be extended as per requirement of the Company and performance of the concerned individuals but upto the duration of the project. In no case the individuals will be appointed on regular basis in the Company and on completion of the above project their services will be repatriated to parent department in case of deputationists and will be terminated in respect of those appointed on contract basis. The contract appointment shall be subject to signing of contract agreement containing all the terms and conditions of appointment.

Thanking you.

Yours faithfully,

(D.S.PAHWA)
SENIOR MANAGER (PERSONNEL)

Copy to:-

Shri D.K.Sharma, Deputy Chief Engineer, WAPCOS

8. The respondent had also sent another letter dated 7th May, 1991, specifically asking for the services of the appellant and requesting to provide his services with WAPCOS on deputation basis for a period of two years as the WAPCOS had been awarded the work for survey and investigations for preparation of detailed project report for Chukha Hydel Power Project – Stage II. However, no appointment was made in terms of the said letter.

9. The appellant had completed his deputation at Bhutan on 30.4.1991 and was repatriated to his parent department i.e.

Central Water Commission (in short 'CWC'). Later on CWC circulated the requisition of WAPCOS for Liaison Officer (Technical). The appellant had applied and was selected vide letter (undated) for the post of Liaison Officer (Technical) in the pay scale of Rs.700-1300 (Pre-revised). The said letter is reproduced as under:

"IMMEDIATE

WAPCOS

*Mr.Meenakshi Arora
Under Secretary to the Government of India
Ministry of Water Resources
Shram Shakti Bhawan
New Delhi 110001.*

*Subject: Appointment of Shri K.V.Chandrasekharan,
Assistant Director on deputation basis in WAPCOS as
Liaison Officer (Technical)*

Dear Madam,

Please refer to your letter No.5/10/91-Est.I dated nil forwarding therewith bio-data of Shri K.V.Chandrasekharan, Assistant Director, Central Water Commission for consideration for appointment to the post of Liaison Officer (Technical) in the pay scale of Rs.700-1300 (Pre-revised) (likely to be revised on IDA pattern) on deputation basis in WAPCOS.

We are pleased to inform you that Shri K.V. Chandrasekharan, Assistant Director has been selected for appointment to the post of Liaison Officer (Technical) in the pay scale of Rs.700-1300

(Pre-revised) on deputation basis in WAPCOS. You are, therefore requested to kindly approve his deputation with WAPCOS for a period of two years in the first instance which may be extended as per the requirement of the company. He will be governed by the usual terms and conditions of deputation of the Central Government issued by Central Water Commission/ Ministry of Water Resources and acceptable to the Company. His Headquarters shall be at Phuntsholing (Bhutan). But the post carries the liability to serve anywhere in India or abroad as per the exigencies of the Company's work. This clause may please be incorporated in deputation terms. During his posting at Bhutan he will be governed by the terms and conditions as per annexure to this letter.

As the services of Shri K.V. Chandrasekharan are required urgently, we shall be grateful if arrangement could be made to relieve him immediately but latest by 15th September, 1991 to join the post in WAPCOS. The detailed terms and conditions covering his deputation may also be issued at an early date.

Yours faithfully

Sd.

*(S.K.AHUJA)
MANAGER (PA)*

Encl. : As above.

10. Vide office order dated 21.10.1991, the appellant was to join his services at Bhutan. The said letter also contains the terms and conditions of appellant's assignment. The document is reproduced as under:

*“WATER AND POWER CONSULTANCY SERVICES (INDIA) LIMITED
(A GOVERNMENT OF INDIA UNDERTAKING)
5TH FLOOR, HANSALAYA, 36 K.G.MARG, NEW DELHI-110001*

No.5/342

21st October, 1991

OFFICE ORDER NO.634/91

Shri K.V. Chandrasekharan, Asstt. Director, CWC, will proceed to Phuntsholing immediately, on Company's assignment relating to Investigation & Preparation of detailed Project Report for Tala Hydro Electric Project & Wangchu Reservoir Scheme, Bhutan as Liaison Officer (Technical for a period of one year.

During the period of his assignment he will be governed by the terms and conditions as annexed.

*for Water & Power
Consultancy Services
(India) Limited*

Sd/-

(Y. P. DAGGA)

Dy. Manager (Pers.)

*Shri K.V.Chandrasekharan, Liaison Officer through
CE (P) WAPCOS Saket Office.....”*

The annexed terms and conditions are reproduced as under:

Terms and conditions governing assignment of Experts deputed to Bhutan in connection with investigation and preparation of Detailed Projects Reports (DP&S) for Tala Hydro Electric Projects and Wangchu Reservoir Scheme—Bhutan.

The terms and conditions of appointment for the above said project for the officers and staff proceeding to

Bhutan shall be the same as admissible to the officers/staff of the similar grade deputed to Bhutan under the Attorney of External Affairs Orders issued from time to time. A copy of each enumerated circular number related to the said terms and conditions is attached.

1. Q/FD/6910/10/86 dated 15.7.87

The terms and conditions are however, subject to amendments by the Ministry of External Affairs from time to time.

MAIN FEATURES ARE AS UNDER:

1. SALARY AND ALLOWANCE

a) FOR SERVICE IN INDIA

The headquarters in India will be at New Delhi.

i) DEPUTATIONIST

Pay and allowances as per DPC on the date of joining WAPCOS plus deputation allowance as per rules.

OTHERS

Basic pay plus allowances as admissible in WAPCOS per month.

b) FOR SERVICES IN BHUTAN

BASIC PAY plus (BCA) as admissible

The BCA of Group A, B, C & D officers staff whose pay has been refixed in the revised pay scales under Central Civil Services (Revised Pay) Rules, 1986/Central Civil Services (Revised Pay) amendment Rules, 1987 shall be reduced as follows. Deputationist will not be entitled to any deputation allowance during service in Bhutan.

a) REVISED PAY UPTO RS. 3500/- PER MONTH

By an amount equivalent to 50% of pay in the

revised scale subject to a maximum of Rs. 1450/-.

REVISED PAY EXCEEDING RS. 3500/- BUT UPTO RS. 4500/-PER MONTH.

By Rs. 1450/- plus 30% of the amount by which revised pay exceeds Rs. 3600/-.

c) REVISED PAY EXCEEDING RS. 4500/- PER MONTH.

By Rs. 1750/- plus 40% of the amount by which revised pay exceeds Rs. 4500/- subject to a maximum of Rs. 2550/-.

2. BHUTAN COMPENSATORY ALLOWANCE (SEE ANNEXURE-I) ATTACHED.

The minimum Compensatory Allowance is Rs. 1965/- and maximum BC is Rs. 6090/- at Bhutan for different categories. This BCA includes remuneration of two part time servants (domestic) which the officers can engage on the standard rates of wages subject to entitlement and certification viz:-

<i>Rs</i>	
TLE	366
SLE	305 subject to certification
MLE	244”

11. WAPCOS extended the assignment of the appellant with them vide letter dated 6.1.1993 upto 31.5.1993. The said letter is reproduced as under:

*“WATER AND POWER CONSULTANCY SERVICES (INDIA) LIMITED
(A GOVERNMENT OF INDIA UNDERTAKING)
5TH FLOOR, KAILASH, 26 – K.G. MARG, NEW DELHI-110001*

No.5/342/92/Vol.IV

6th January, 1993

OFFICE ORDER NO.7/93

In continuation of Office Order No.634/91 dated 21.10.91, the term of assignment of Shri K.V.Chandrasekharan, Liaison Officer. (Technical), WAPCOS on deputation from Central Water commission is, hereby, extended upto 31.5.1993 at Phuntsholing, Bhutan in connection with the work relating to Investigation and Preparation of Detailed Project Report for Tala Hydro Electric Project & Wangchu Reservoir Scheme, Bhutan.

During the period of his assignment he will be governed by the terms and conditions of deputation abroad applicable at Bhutan which has already been issued vide office order No.634/91 dated 21st October, 1991.

*For Water & Power Consultancy
Services (India) Limited*

*(Y.P.Bagga)
Dy.Manager (Pers.)”*

12. Vide letter dated 11.6.1993 the term of the appellant was further extended upto 31.5.1994. The said letter is reproduced as under:

*“WATER AND POWER CONSULTANCY SERVICES (INDIA) LIMITED
(A GOVERNMENT OF INDIA UNDERTAKING)
4TH FLOOR, KAILASH, 26 K.G. MARG, NEW DELHI -110001*

No.5/342/92/Vol.IV

11th June, 1993

OFFICE ORDER NO.559/93

In continuation of Office Order Nos.634/91 dated 21-10-91, and 7/93 dated 6-1-93 the term of assignment of Shri K.V. Chandrasekharan, Liaison Officer (Technical), WAPCOS on deputation from Central Water Commission is, hereby extended upto 31-5-1994 at Phuntsholing, Bhutan in connection with the work relating to investigation and preparation of Detailed Project Report for Tala Hydro Electric Project & Wangchu Reservoir Schemes, Bhutan.

During the period of his assignment he will be governed by the terms and conditions of duration abroad applicable 634/91 dated 21st October, 1991.

*for Water & Power Consultancy
Services (India) Limited*

*Sd/-
(D.S. Pahwa)
Dy. Chief (P & A) ”*

13. It is quite apparent from the letter of respondent dated 6th April, 1991 that the respondent, when demanding man power for themselves, had needed a Liaison Officer (Tech.) and wanted to appoint a person on this post on deputation basis, while the other three posts i.e. of Steno-Typist, Peon and Driver were to be filled by them on contract basis. The said letter indicates that posts at Sl.No. 2 to 4 are on contract basis while post at Sl.No. 1 of Liaison Officer (Tech.) was to be filled on deputation basis. The letter further clarified that on completion of the above project, the individuals who were on deputation would be repatriated to their parent department and the services of those who were appointed on contract basis would be terminated. In the present case, there is no dispute to the fact that on completion of the term, the appellant was repatriated to his parent department. The letter of

the respondent dated 7.5.1991, further, clearly states that the respondents needed the services of liaison officer on deputation basis.

14. The letter of WAPCOS by which the appellant was selected, which is undated, clearly indicates that the appellant had been selected for appointment to the post of Liaison Officer (Technical) in the pay scale of Rs.700-1300/- (pre-revised) on deputation basis. Vide this letter WAPCOS had requested the parent department of the appellant to approve his deputation with WAPCOS for a period of two years in the first instance. The letter further indicates that the appellant shall be governed by the usual terms and conditions of deputation of the Central Government issued by the Central Water Commission/Ministry of Water Resources and acceptable to the company.

15. Pursuant to this letter the appellant was spared by his parent department to work with the respondents vide letter dated 21.10.1991. The terms and conditions governing his employment with the respondents were annexed with this letter. This

annexure, which has already been reproduced earlier, contains the terms and conditions of appointment with respondents. This annexure shows that all the officers who have given the assignment to work with WAPCOS, would be subject to the same terms and conditions as are applicable to similarly placed officers deputed to Bhutan under the order of Ministry of External Affairs. The copy of circular relating to terms and conditions was shown as numbered Q/FD/6910/10/86 dated 15.7.87. It is further clarified in this letter that these terms and conditions which are part of the appointment letter dated 21.10.1991 that the terms were not static but subject to amendments by the Ministry of External Affairs from time to time.

16. The respondents had accepted the services of the appellant with said terms and conditions. Meaning that it was accepted by the respondents that the appellant would be entitled to the similar grade admissible to the officers/staff deputed to Bhutan under Ministry of External Affairs under circular of Ministry No.1 Q/FD/6910/10/86 dated 15.7.87 subject to amendment in these

terms and conditions by Ministry of External Affairs from time to time. The fact that these terms and conditions were acceptable to the respondents is also clear from the letters dated 6.1.1993 and 11.6.1993 whereby the term of assignment of the appellant was extended upto 31.5.1993 and further to 31.5.1994 respectively. These letters clearly states that during the assignment with respondent the appellant would be governed by the terms and conditions of deputation abroad applicable at Bhutan, which had already been issued vide letter no.634/1991 on 21.10.1991. This implies that these terms and conditions which are enumerated in letter dated 21.10.1991 were acceptable to the respondents. These terms and conditions clearly state that the appointment of the appellant with the respondent would be governed by the terms and conditions of Ministry of External Affairs vide its circular Q/FD/6910/10/86 dated 15.7.1987 subject to its amendment by Ministry of External Affairs from time to time. No dispute that the basic pay and the other remuneration of the appellant were fixed in terms of the Ministry of External Affairs' order

No.Q/FD/6910/10/86 dated 15.7.87.

17. The letter dated 21.10.1991 containing terms and conditions discloses the minimum BCA as Rs.1965/- and maximum BCA as Rs.6090/- at Bhutan for different categories. The contention of the appellant is that he was paid the same BCA which he was receiving while working with the Chukha Hydel Project at Bhutan. At the Chukha Hydel Project at Bhutan, the appellant was drawing Rs.5410/- as he was an Engineer and his pay was not exceeding Rs.3000/-. This payment falls within the minimum and maximum BCA at Bhutan prescribed in these terms and conditions for different categories. This BCA had also been fixed in terms of the Ministry of External Affairs' circular no. Q/FD/6910/10/86 dated 15.7.87.

18. Vide the circular No.EIV/235/3/93 dated 18.3.1993 of the Ministry of External Affairs, the BCA for officers of the Central and State Government of India during service on deputation with Royal Government of Bhutan was revised with effect from 1.12.1991. This revised scale was applicable to the Central and

State Government employees whose pay scale have been revised with effect from 1.1.1986 or thereafter. The order No. Q/FD/6910/10/86 dated 15.7.87 of the Ministry of External Affairs was therefore modified and new rates of BCA became applicable with effect from 1.12.1991. By that time the pay of the appellant was exceeding Rs.3000/- per month and he was entitled for Rs.15284/- per month towards BCA. The appellant had raised the demand of revision of his BCA in terms of this order of the Ministry of External Affairs. He wrote letters on 6.6.1994, 22.2.1995, 22.6.1995, 8.8.1995 and 29.11.1995, but his request had fallen on deaf ears and finally his claim was rejected.

19. The contention of the appellant that he was all along worked as a deputationist with the respondent also gets support from the fact that when he proceeded on leave, he was denied BCA by the respondents. He had written a letter dated 12.10.1993 asking the respondents to spell out the reason for not paying BCA for the month of September, 1993 when he was on leave. In response to his letter, he was informed that Clause

No.13 of the terms and conditions of his employment stipulates that experts posted overseas will be entitled to Home Office pay during leave irrespective of the fact that he avails leave in India or abroad and on this ground BCA was denied to appellant during his leave period. This fact, however gives weight to the contention of the appellant that he was on deputation with the respondents and terms and conditions annexed with his letter of assignment dated 21.10.1991 were governing him and were also accepted by the respondent as they had relied on it and had also acted on it. The very fact that the respondents had denied him the BCA during his leave period in view of Clause 13 of the terms and conditions annexed with letter of assignment dated 21.10.1991 shows that these terms and conditions were accepted by the respondents' company. At this stage, it is not open to the respondent to take the plea that amount of BCA prescribed by the Government of India or the Ministry of External Affairs was not applicable to WAPCOS while dealing with the service conditions of the appellant. The contention of the WAPCOS that they had

revised BCA for its employee at the rate of 33% on 1.4.1992 and 20% with effect from 1.1.1994 after reviewing the working assignment and were thus paying the similar allowance to other employees of WAPCOS working in Bhutan has no force in view of the categorical terms and conditions governing the service of the appellant with the respondents. He was not a contractual employee of the respondents but his assignment was on deputation and his pay and allowances were subject to the circulars of the Ministry of External Affairs revised from time to time.

20. The petitioner had been raising objections to the fixation of his BCA by the respondent and had been writing letters to the respondents but the respondents paid no heed to his letters and never even bothered to reply it. It had never clarified to the appellant that he was not entitled to the BCA as per the terms and conditions of his assignment vide letter dated 21.10.1991 but that his BCA was subject to the calculation of reviewing the working assignments. Even in the annexure attached to the letter dated

21.10.1991, there is no mention that the BCA would be calculated by the respondents after reviewing the working assignment. It has given the upper and lower limit of BCA for different categories and this maximum and minimum limit is also as per the circular No.1 Q/FD/6910/10/86 dated 15.7.87 of the Ministry of External Affairs. It is also clear that the appellant had written the letter dated 1.5.1993 objecting to payment of additional 33% of BCA above the amount of BCA fixed in 1987 which was actually far less than the revised BCA. It, thus, cannot be said that the petitioner had accepted the amount of BCA paid to him without any objection. He had been receiving the BCA amount paid to him by the respondents under objection and all along been demanding the BCA as per his entitlement. The terms and conditions of his appointment attached with his letter of assignment dated 21.10.1991 are very clear and there is no ambiguity in any part of these terms and conditions. All these terms and conditions are subject to the amendments by Ministry of External Affairs from time to time.

21. The respondents have raised the issue that vide their letter dated 21.10.1992 written by Deputy Financial Advisor, WAPCOS to the appellant, he was informed that the BCA would be regulated as per the provisions made in the working cost estimate of the project and that the allowances payable to the employees of the Government of India posted at Bhutan does not apply to WAPCOS. The appellant had disputed the said letter stating that the same was never served upon him. There is no mention of the aforesaid letter even in the office order dated 6.1.1993 and 11.6.1993 by which period of employment of the appellant was extended. Rather, as discussed above, his employment period was extended in terms of letter dated 21.10.1992 clearly showing that instead of relying on its letter dated 21.10.1992, while extending the assignment of the appellant with them, WAPCOS had accepted the terms and conditions of the assignment of the appellant detailed in letter dated 21.10.1991. There is nothing on record to show that it was duly served upon the appellant. The respondent could have,

while extending period of employment of appellant vide letter dated 6.1. 1993 and 11.6.1993, made the mention of its letter dated 21.10.1992 and could have informed the appellant about the change in condition of services of appellant with them qua his entitlement of BCA.

22. During the course of arguments it has also been brought to our notice that the reply dated 20.1.2009 under RTI Act also clearly indicates that the BCA for the year from 1991-1995 had been paid to the officers on transfer/posting to Bhutan Investigation Division as per amendment order of Ministry of External Affairs, New Delhi. It is submitted that while all the other persons, posted on transfer or otherwise with the respondents had been paid as per Ministry of External Affairs' orders, the same benefit has been denied to the appellant.

23. From the above discussion, it follows that the appellant was working on deputation with the respondents. His terms and conditions were governed by the circular of the Ministry of External Affairs No.1 Q/FD/6910/10/86 dated 15.7.87 subject to

its amendments from time to time. At no point of time the services of the appellant were considered on contract basis with the respondents and at no point of time he had been paid as a contractual employee. It is also evident that on completion of term of deputation with the respondents, the services of the appellant were repatriated. It is also apparent from the reply of the RTI that all the other employees of the respondents working on transfer or otherwise from the Ministry of External Affairs had been given all the benefits under the orders of the Ministry of External Affairs which was revised from time to time between the period of 1991-1995.

In view of the above discussion, we hold that the appellant is entitled to the revised BCA in terms of the Ministry of External Affairs' order dated 18.3.1993 w.e.f. from 1.12.1991.

24. The Respondents no.2 and 3 shall compute the entitlement of the petitioner in accordance with the directions of the Ministry of External Affairs with a period of four weeks and communicate the same to the petitioner forthwith. The payment in term of the

computation shall be forwarded to the petitioner within a period of four weeks thereafter.

25. This writ petition is allowed in the above terms.

26. The petitioner shall be entitled to costs which are assessed at Rs.15000/- payable within a period of four weeks from today.

(DEEPA SHARMA)
JUDGE

(GITA MITTAL)
JUDGE

JULY 21, 2014
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