

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.524/94

NEW DELHI THIS THE 30th DAY OF JANUARY, 1995.

MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri R.P.Sharma
R/o J/A,41-B, L.I.G.Flats
Mayapuri,
New Delhi-110064

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APPLICANT

BY ADVOCATE SHRI K.K.RAI.

vs.

1. Union of India
through its Secretary
Cabinet Secretary
East Block
R.K.Puram
New Delhi-110066.
2. Aviation Research Centre
through Directorate General of Security
Office of the Director ARC
Cabinet Secretariat
East Block V, R.K.Puram
New Delhi-110066.
3. Vayudoot Limited
through its Managing Director
Safdarjung Air Port
New Delhi-110003

RESPONDENTS

BY SENIOR ADVOCATE SHRI P.H.RAMCHANDANI.

ORDER

JUSTICE S.K.DHAON:

The applicant, a Trainee Pilot in the Aviation Research Centre, Directorate General of Security(Cabinet Secretariat), is aggrieved by the communication dated 3.9.1993 of the Deputy Director(Administration) requiring him to execute a bond for Rs.7.5 lakhs. Hence this application.

2. Shorn of the averments made by the applicant in relation to his previous appointments elsewhere, he was directly recruited as a Trainee Pilot in the Aviation Research Centre(hereinafter referred to as the ARC) . On 22.7.1992, a Memorandum was issued by the Director(SR),Government of India, Cabinet Secretariat to the applicant whereby an offer of appointment for the post of a direct recruit Pilot was made. The material recitals in the memorandum are these.

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The President is pleased to offer the applicant an appointment as a Trainee Pilot in the ARC(S) Cabinet Secretariat. The department reserves the right to utilise the services of the officer on any aircraft held in the inventory of ARC. The appointment is purely temporary and the applicant will be on probation for a period of two years. The scale of pay of the post is Rs.2200-4000/- plus other allowances admissible to Central Government Employees of corresponding rank and the initial pay of the applicant will be fixed according to the rules on the subject. The appointment may be terminated at any time by giving a month's notice by the appointing authority without assigning any reason. The appointing authority, however, reserves the right of terminating the services of the applicant forthwith or before the expiry of the stipulated period of notice by making him the payment of a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof. The appointment will be subject to the condition that the applicant will have to execute a bond of the value of Rs.7.5 lakhs (Rupees Seven Lakhs & Fifty Thousand only) to serve in ARC for at least 10 years. If the applicant accepts the offer on the above terms, he should intimate the acceptance in writing within one month from the date of issue of the letter and report to Assistant Director (Administration) at ARC Sarsawa after being found medically fit by the Board.

3. Copies of the said memorandum were forwarded to the Director, ARC, New Delhi, DD(AW), ARC, New Delhi and AD(A) ARC, Sarsawa.

4. On 5.8.1992, the applicant sent a letter to the Director, ARC, Directorate General of Security (Cabinet Secretariat) New Delhi. The subject of this letter is "acceptance of offer of Appointment to the post of Trainee Pilot". It will be profitable to extract the relevant portion of the contents of this letter:

"I am to refer to your Memo No.4/35/91-D.O.II dated 22.07.92 and to say that terms and conditions for appointment to the post of Trainee Pilot are acceptable to me.

It is for information and necessary action."

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5. We may now turn to the impugned communication dated 3.9.1993. The subject of this communication is "Offer of appointment to Direct recruit pilots." We may note that the said memorandum was issued to 4 other Trainee Pilots apart from the applicant. The material recitals in the memorandum are these. Para 5 of respective offer of appointment issued to the Trainee Pilots in the ARC may be referred to. Since the offer of appointment was subject to the condition that they will execute a bond for Rs.7.5 lakhs to serve this organisation at least for 10 years, the same is required to be executed now to regularise their appointment. A specimen copy of the duly approved bond by the Government is enclosed for each Trainee Pilot. All the Trainee Pilots are requested to execute the bond within three weeks from the date of issue of the letter and send the same to the Headquarters so that their joining in ARC could be regularised as per condition laid down in their offer of appointment.

6. On 26.10.1993, the applicant sent a communication to the Deputy Director Administration(A/W), ARC, Headquarters, New Delhi. In it, it is, inter-alia, recited that when he joined the organisation he was already qualified pilot for Helicopters and as such he fell in a different category compared to those who were raw hands and trained by the ARC. The bond for such exorbitant amount may be justified in their case and not in his case. Now comes the important contention advanced by the applicant in the said communication. It is stated that the terms of the bond are unconscionable, harsh and opposed to public policy. The imposition of such harsh terms on weak employees is arbitrary. It has no nexus with public policy. It is also hit by Articles 14, 16, 19 and 21 of the Constitution of India.

7. On 24.1.1994, the Deputy Director(Admn.) AW sent a memorandum to the applicant in which it is stated that as per para 5 of the appointment offer issued to the applicant, his appointment to the post of a Trainee Pilot in ARC is subject to execution of a bond for Rs.7.5 lakhs as surety to serve the

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Department for at least 10 years. In the absence of bond being executed by the applicant, neither his appointment could be regularised nor he would be nominated to any conversion/MCF course. It is emphasised that in para 7 of the offer of appointment, the applicant was clearly told that if the terms are acceptable to him, he should intimate the acceptance. Not only did the applicant give his acceptance but also physically joined at ARC, Sarsawa. Hence he is duty bound to execute the bond. The applicant was also informed that he should execute the bond latest by 31.1.1994 failing which departmental action as deemed fit will be initiated against him.

8. We may note that this OA was presented in this Tribunal on 28.2.1994. On 17.3.1994, notices were issued to the respondents, returnable on 27.4.1994. A counter-affidavit was filed on behalf of the respondents on 8.9.1994. Therein, the material averments are these. All the Trainee Pilots in the ARC were required to sign the bond of Rs.7.5 lakhs to serve the organisation for 10 years. Since a lot of time and huge expenditure involving several lakhs of rupees is incurred on their training in order to make them fully operational pilots for their proper utilisation in public interest it is desirable that their services are available to the organisation for sufficient time i.e. for at least 10 years. The submission of such a bond is an established practice in many organisations. All the other pilots have signed the bond except the applicant. The applicant was directly recruited as a Trainee Pilot on the basis of an open interview held on 3.9.1991. He was given an offer of appointment vide Cabinet Secretariat's letter dated 22.7.1992 clearly stating the terms and conditions of appointment. As per/5 of the terms and conditions of appointment which constitute a specific contract between the employee and the employer, the applicant had to sign a bond for Rs.7.5 lakhs to serve the organisation for 10 years. The applicant accepted in writing the conditions of offer of appointment and joined ARC Sarsawa on 10.8.1992. He was asked to execute the bond as per terms and conditions of his appointment vide letter dated 30.9.1993 but he declined to comply with the instructions vide letter dated 26.10.1993 and did not fulfil the basic requirement

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in this regard. He was further reminded vide letter dated 24.1.1994 to execute the bond whereas all other Trainee Pilots have executed the same as required under the terms and conditions of appointment. Signing of the bond was one of the essential conditions of appointment as indicated in para 5 of the offer of appointment. The condition that the applicant should sign a bond is neither unconscionable nor harsh and nor opposed to public policy and it is no way arbitrary. The bond was well considered and duly approved by Government in consultation with the Ministry of Law and the Government is within its right to ask for execution of such a bond lest the Trainee Pilots after gaining training and sufficient flying experience at a very high cost involving expenditure running into several lakhs of rupees to the Government may quit the organisation in the absence of any provision of bond. Therefore, the execution of such a bond is in public interest.

9. An amended OA was filed by the applicant. We shall refer to the contents of the amended OA a little later.

10. An additional affidavit has been filed by the respondents in which the material averments are these. The operational cost for chetak Helicopter per hour is Rs.18,898/-which is the rate charged for air assistance given to the various agencies.

Taking this as the approximate basis ^{the} cost of flying, the applicant has done 142:15 hours of flying on chetak Helicopter and, therefore, the expenditure incurred on his flying is worked out as Rs.26,88,241/ (18,898 x 142.15). If the applicant is given further flying on a new variety of sophisticated aircraft equipped with latest avionics and technology, the flying hour cost further increases manifold. If the applicant does not sign the bond after acquiring training on different aircrafts and gaining experience of more flying hours, he may quit the organisation and join some commercial airlines for more lucrative pay and perks. The organisation of the respondents is a highly sensitive one and all its air operations are of Top Secret nature in public interest and in the interest of the security of the country. It is, therefore, very imperative and in the public interest if the applicant is put under a bond

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to serve the organisation at least for 10 years in the interest of the Nation and to ensure that huge expenditure incurred on flying training/expenditure of the applicant is not allowed to go waste. On an enquiry from the Management of Indian Airlines it is revealed that the Trainee Pilots appointed by the Indian Airlines are required to execute a mandatory bond for Rs.10 lakhs for serving the Indian Airlines for a minimum period of 10 years at the initial stage. The period of bond is liable to be extended in case the Trainee Pilots are required to be trained for a different type of aircraft. In other words, after every subsequent endorsement, the Trainee Pilots are bound to serve the Indian Airlines for a further period of 10 years. As per the terms of the bond, the Trainee Pilots are liable to pay liquidated damages for an amount of more than Rs.10 lakhs. The applicant was required to execute a bond for a lesser amount of Rs.7.5 lakhs for serving in ARC for a minimum period of 10 years only. During this period, he would gain training and experience on various types of new Helicopters at Govt. expenses involving several lakhs in terms of flying hours. The bond required to be executed by the applicant for Rs.7.5 lakhs for serving the organisation of the respondents for a minimum period of 10 years as per para 5 of the terms and conditions of his appointment (already accepted by the applicant in writing) is in public interest and is justified and reasonable.

11. Annexure 'C-I' to the additional affidavit is a letter of the Desk Officer, Government of India, Ministry of Defence dated 30.3.1993 to the Chief of the Air Staff (with 20 spare copies). A perusal of this letter indicates that the contents thereof substantially corroborate the averments made in the additional affidavit filed by the respondents.

12. Annexure 'C-II' to the additional affidavit is a copy of the letter dated 7.10.1994 of the General Manager of the Indian Airlines to / Deputy Director ARC Directorate General Security (Cabinet Secretariat) New Delhi. Along with the said letter, a specimen of the agreement entered into between the

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Trainee Pilots and the Indian Airlines is annexed. A perusal of the terms and conditions as contained in the agreement will show that they substantially corroborate the averments made in the additional affidavit filed on behalf of the respondents.

13. Two questions arise for our consideration. The first is whether the requirement of furnishing a bond for a sum of Rs.7.5 lakhs is illegal or arbitrary. The second is whether the figure of Rs.7.5 lakhs as the quantum for which a bond should be executed has been arbitrarily fixed. We do not find any illegality or irrationality in the condition of the ARC to insist upon the execution of a bond by the Pilot Trainees. It has been shown by the respondents that such is the practice in the Indian Airlines as well. It is also demonstrated by the respondents that having regard to the sensitive duties and responsibilities of the Trainee Pilots in the ARC, it is in public interest that the services of those pilots engaged and trained should be ensured to the ARC for a minimum period of 10 years. We, therefore, do not find any illegality or irrationality in the insistence upon the signing of a bound. Indeed, it is not the case of the applicant nor can it be that the insistence by the respondents upon the applicant and others like him to furnish a bond is in any manner illegal or arbitrary.

14. The thrust of the submission appears to be that the quantum of Rs.7.5 lakhs as fixed by the ARC is not reasonable. Having considered the material on record and particularly, the additional reply given by the ARC, we are unable to record a finding that fixation of a sum of Rs.7.5 lakhs as the amount for which a bond should be executed by a Trainee Pilot is either arbitrary or unjust. We do not find that the determination of the said quantum by the ARC is so excessive so as to tantamount to be outrageous or shock our conscious. The matter really falls in the realm of a policy decision and that decision, in our opinion, is based on relevant considerations.

15. We are not impressed by the argument advanced by the learned counsel for the applicant that the condition that

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the applicant and other Trainee Pilots should sign a bond for a sum of Rs.7.5 lakhs is unconscionable so as to attract Section 23 of the Contract Act. We have already held that such a condition is in the public interest and it, therefore, follows that it is not opposed to public policy. The applicant accepted the appointment as a Trainee Pilot and even commenced training at Sarsawa with his eyes open. He was given an offer of appointment which clearly stipulated the signing of a bond for a sum of Rs.7.5 lakhs. This is not a case where ARC took undue advantage of their position as an employer. Moreover, we have already held that the quantification of a sum of Rs.7.5 lakhs as the amount for which the bond should be executed is neither unjust nor unfair. Therefore, all told we hold that the condition that the bond should be executed by the Trainee Pilots for a sum of Rs.7.5 lakhs is not hit by Section 23 of the Contract Act. It appears to be an admitted position that all other Trainee Pilots barring the applicant accepted the terms and signed the bond. Argument based on Section 23 of the Contract Act, therefore, fails.

16. During the pendency of this OA after notices had been served upon the respondents, an order purported to have been passed under Rule 5 of the CCS(Temporary Service) Rules terminating the services of the applicant had been passed. The order disclosed no reasons. We, therefore, directed the learned counsel for the respondents to produce the relevant record. A perusal of the record disclosed that the reason given for terminating the services of the applicant was the mere fact that he(the applicant) had failed to sign a bond for a sum of Rs.7.5 lakhs. The matter was subjudice before us. We, therefore, took the view that the act of the authority concerned in terminating the services of the applicant on a ground which was engaging the adjudication of this Tribunal appeared to be high-handed. Accordingly, we stayed the operation of the order of termination. That interim order continues to operate even now.

17. Article 23(1) of the Constitution of India states that traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

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Sub-article(2) states that nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

18. The argument of the learned counsel for the applicant based on Article 23 is this. The financial condition of the applicant is precarious and if he signs the bond and if he later on decides not to serve the ARC, he would not be in a position to do so because of a sum of Rs.7.5 lakhs and, therefore, he will have perforce to serve the ARC for 10 years which will amount to a forced labour within the meaning of Article 23 of the Constitution. Having given a thoughtful consideration to this argument, we are of the opinion that Article 23 of the Constitution is not applicable to the facts and circumstances of this case. Having regard to the terms and conditions of the offer of appointment, a regular appointment of the applicant has not come into existence so far. The condition precedent of the applicant being converted into a regular pilot from the ~~stance~~ of a Trainee Pilot is that he should sign the bond for a sum of Rs.7.5 lakhs so as to ensure his service to the ARC for a period of 10 years. Even now, it is open to the applicant to either accept the condition or reject the same. Again, it is not the case of the applicant that he is or he will be required to render service without being compensated to do so. Again, it is not his case that emoluments which are given to him and which will be given to him in future are below the minimum wages as fixed in the Minimum Wages Act. The question of, therefore, begar being taken from him does not arise. Therefore, on the face of it, the argument based on Article 23 of the Constitution is untenable.

19. We may now advert to the averments made by the applicant in the amended OA. The thrust is that the applicant accepted the appointment as a Trainee Pilot in the ARC under compelling circumstances. By that as it may, such circumstances were not brought about by the ARC. If at all, the previous employers of the applicant did not behave properly with him and for that the

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ARC cannot be held responsible. As already indicated, it is an admitted position that the applicant was directly recruited by the ARC as a Trainee Pilot. It has been emphasised by the applicant that he was served with the letter of appointment of the ARC as a Trainee Pilot through the Vayudoot. We have already indicated that the copies of the appointment letter were issued by the ARC to three other bodies and Vayudoot was not one of them. Nothing will, therefore, turn upon the additional averments made by the applicant in the amended OA either to attract Section 23 of the Contract Act or Article 23 of the Constitution of India.

20. We may now examine the contents of the order by which the services of the applicant had been terminated in the exercise of power under Rule 5(1) of the C CS(Temporary Service) Rules. We have already referred to the terms of the offer of appointment. The order of termination fully conforms to the conditions enumerated in the offer of appointment. It also fully conforms to the requirement of the relevant rules. Since we have repelled the contention of the applicant on merits, no infirmity can be attached to the order of termination. However, in the interest of justice, we give a chance to the applicant to save his service, if he so likes, by signing the bond for a sum of Rs.7.5 lakhs, as desired by the ARC. He shall do so within a period of one month from the date of receipt of a certified copy of this order. If that is done, the order of termination shall not be given effect to and the respondents shall treat the applicant as a regular pilot and give him all the benefits which are attached to that position and as ^{are} permissible under the law. We make it clear that if the applicant does not sign the bond within the time specified by us, the order of termination shall become effective.

21. Subject to above directions, this OA is dismissed but without any order as to costs.

B.N.Dhundiyal
(B.N.DHUNDIYAL)
MEMBER(A)
SNS

S.K.Dhaon
(S.K.DHAON)
VICE-CHAIRMAN