IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(7)

O.A. No. 1207/89. 199

~~T.A. No.~~

DATE OF DECISION 01.06.1994.

Ved Prakash Malhotra	Petitioner
Shri G.K. Aggarwal.	Advocate for the Petitioner(s)
Versus	
Union of India & Others.	Respondent s
Shri M.M. Sudan	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. JUSTICE V.S.MALIMATH, CHAIRMAN.

The Hon'ble Mr. P.T. THIRUVENGADAM, MEMBER (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(V.S. MALIMATH)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1207/89.

New Delhi, this the 01st day of June, 1994.

SHRI JUSTICE V.S. MALIMATH, CHAIRMAN.
SHRI P.T. THIRUVENGADAM, MEMBER(A).

Ved Prakash Malhotra,
son of late Shri Chetan Dass Malhotra,
C/o Shri G.K.Aggarwal,
G-82, Ashok Vihar-I, Delhi-52. ...Applicant

By advocate : Shri G.K. Aggarwal.

VERSUS

1. Union of India, through Secretary,
Ministry of Personnel, Public Grievances
and Pensions, North Block,
NEW DELHI-1.

2. UNION OF INDIA, through Secretary,
Deptt. of Defence Research & Development &
SA to DM & DGDR&S, South Block,
NEW DELHI-11.

3. UNION OF INDIA, through Secretary
Finance (Defence), Defence Division,
South Block, NEW DELHI-11.

4. The DIRECTOR,
Defence Institute of Fire Research,
Probyn Road, DELHI-7.
...Respondents

By advocate : Shri M.M. Sudan.

O R D E R (ORAL)

SHRI V.S.MALIMATH:

The petitioner Shri Ved Prakash Malhotra served as a Scientific Assistant and thereafter as Junior Scientific Officer in the Defence Research and Development Organisation between 30-1-1968 and 22-1-1986. He tendered his letter of resignation on 1-11-1985 which was accepted on 18-7-1986 with effect from 22-1-1986. According to the petitioner, having regard to the number of years he has put in, he had

(9)

the necessary qualification for grant of pension and gratuity. However, consequent upon his resignation, he was not given the benefit of pension and gratuity having regard to the prohibition contained in rule 26(1) of Central Civil Services (Pension) Rules, 1972. Sub-rule (1) of rule 26 of the Rules reads : "Resignation from a service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service." The petitioner having voluntarily resigned from service, rule 26 was attracted entailing forfeiture of past service, thereby depriving him of the benefit of pension and gratuity. He has, therefore, challenged rule 26(1) of the rules as violative of Article 14, 16, 21 and 23 of the Constitution.

2. So far as the challenge to the impugned rule as violating the Articles 14 and 16 is concerned, Shri Aggarwal, learned counsel for the petitioner, submitted that he is not pressing the said contention as it stands concluded in this behalf by the judgment of the Hyderabad Bench of the Tribunal reported in 1994(26) Administrative Tribunal Cases page 773 between R. Govind Rao vs. Union of India and Others. Hence, we are required to examine the petitioner's case that rule 26(1) is violative of Articles 23 and 21 of the Constitution.

3. We shall first take up for consideration the

(10)

contention of Shri Aggarwal that the impugned rule is void as offending Article 23 of the Constitution. The said provision reads: "Article 23 : Prohibition of traffic in human beings and forced labour--

(1) 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." It is contended by Shri Aggarwal, learned counsel for the petitioner, that what rule 26(1) contemplates is foreiture of the past service meaning thereby the benefit of service which he had already earned, consequent upon voluntary retirement. It was urged that rule 26(1) results in forced labour on the petitioner for the reason that he will be compelled to serve the State unless he is willing to forego the benefit of past service. The expression 'forced labour' had come up for interpretation before the Supreme Court in the case reported in 1982 Supreme Court A.I.R. page 1473 between People's Union for Democratic Rights vs. Union of India. Interestingly, both the sides rely upon the same decision. Shri Aggarwal, learned counsel for the petitioner invited our attention to the observation contained in the concluding portion of para 15 of the judgement where it is observed:

> "We are therefore of the view that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words "forced labour" under Article 23.

(11)

> Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied. It is therefore clear that when the petitioners alleged that minimum was not paid to the workmen employed by the contractors, the complaint was really in effect and substance a complaint against violation of the fundamental right of the workmen under Article 23."

Another observation on which Shri Aggarwal relied reads:

> "Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would be 'forced labour'. "

It appears to us that there is no similarity between the case of a resignation and the case of workman who is required to work for wages lower than the minimum average. Workman has alternatives available to him either to work under prescribed conditions or not to accept the offer to work. The case of voluntary resignation stands on a different footing in the sense that the choice he makes is not to work. He chooses to resign from the job which was available to him. More relevant observation in the judgement which helps us to decide the present case is contained in the paragraph 14 which reads as follows:

> "Take for example a case where a person has entered into a contract of service with another for a period of three years and he wishes to discontinue serving such other person before the expiration of the period of three years. If a law were to provide that in such a case the contract shall be specifically enforced and he shall be compelled to serve for the full period of three years, it would clearly amount to forced labour and such a law would be void as offending Article 23. That is why specific performance of a contract of service cannot be enforced against an employee and the employee cannot be forced by compulsion of law to continue to serve the employer. Of course, if there is a breach of the contract of service, the employee would be liable to pay damages to the employer, but he cannot be forced to continue to serve the employer

(12)

> without breaching the injunction of Article 23. This was precisely the view taken by the Supreme Court of United State in Bailey v. Alabama (1910) 219 US 219:55 Law Edition 191 while dealing with a similar provision in the Thirteenth Amendment."

The Supreme Court has ruled that when a person refused to serve for the contractual period, there is a provision providing for compensation for the breach of contract, i.e., for not serving the term of the contract, it shall not be a case of forced labour. The position of voluntary retirement in this case is similar. What is provided in rule 26(1) is that if you voluntary retire before attaining the age of superannuation, the past service will be forfeited meaning thereby that is the compensation that he has to pay for not serving the full term which he expected to serve until attaining the age of superannuation. Relying on the aforesaid observations of the Supreme Court, we have no hesitation in holding that rule 26(1) which forfeits the past service on voluntary resignation of a Government servant does not amount to forced labour and, therefore, does not violate Article 23 of the Constitution.

4. We are not impressed by the argument that rule 26(1) of the Pension Rules offends Article 21 of the Constitution. When a Government servant voluntarily resigns from service, he makes up his mind to deny himself the means of livelihood which the State has provided to him. When he himself, by his voluntary act denies the means of livelihood which was provided to him by the State, the mere

fact that the past service is forfeited in such circumstance, in our opinion, does not result in contravention of Article 21 of the Constitution.

5. For the reasons stated above, this application fails and is dismissed. No costs.

(P.T. THIRUVENGADAM)
MEMBER (A)

(V.S. MALIMATH)
CHAIRMAN

'KALRA'