

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 1368
T.A. No.

1988

DATE OF DECISION 1-10-91.

Shri Abhay Kant Pathak Petitioner
Shri Apurb Lal, Counsel. Advocate for the Petitioner(s)
 Versus
President, I.C.A.R. & Ors. Respondent
Shri Shailesh Kapoor, Proxy for Advocate for the Respondent(s)
Shri A.K. Sikri, Counsel.

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. D.K. Chakravorty, 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 ?

Ab
 Chairman 1-10-91

V.P

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. O.A. 1368/88

Date of Decision. 1-10-1991

Abhay Kant Pathak

... Applicant.

Versus

President, I.C.A.R. & Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.
THE HON'BLE MR. D.K. CHAKRAVORTY, MEMBER(A).

For the Applicant.

... Shri Apurb Lal,
Counsel.

For the Respondents.

... Shri Shailesh Kapoor,
proxy for Shri A.K.
Sikri, Counsel.

(Judgement of the Bench delivered
by Hon'ble Mr. Justice Amitav
Banerji, Chairman)

The question involved in this Application pertains to the refusal of the Respondents to refund the amount of Bond (Rs.12,000/-) which the applicant was asked to deposit pending grant of resignation from C.M.F.R.I. to join Indian Forest Service (I.F.S.). The point is whether the Respondents' action can be justified and whether the applicant is entitled to get a full refund of the deposit or any part of it.

The Applicant, Abhay Kant Pathak, joined as Scientist at Central Marine Fisheries Research Institute (CMFRI), Cochin, through ARS 1985. He had also appeared for I.F.S. through UPSC 1986 and was selected. He informed the CMFRI, Cochin, his desire to resign and join the IFS in June 1987. He was asked by CMFRI to pay the full Bond amount of Rs.12,000/- before resignation and relieving. The applicant prayed to the Director, CMFRI, Cochin, Director General ICAR, New Delhi and the President of ICAR (Union Minister for Agriculture) for waiver of deposit of the Bond amount as he was resigning from CMFRI to join a Central Government Service in June, 1987. The applicant referred to the Circular No. MHA-CM-28024/1/84-ESTT(C) dated 14.11.1984, where a Central Government servant

resigns from one service to join another the payment of the Bond amount should not be enforced. A fresh undertaking has to be executed by the employee in favour of the new employer for the balance period of the Bond. The applicant has also alleged that ICAR is a registered society and follows Government of India orders mutatis mutandis and is fully financed by the Government of India. The prayer of the applicant for waiver was rejected in July, 1987. The amount of the Bond, Rs.12000/- was deposited with CMFRI on 30th June, 1987 at Cochin. He thereafter prayed to the DG, ICAR and the President ICAR to refund the full amount of the Bond, but there was no reply till July, 1988. Hence the present O.A.

The applicant has prayed for the full refund of the amount of the Bond money deposited with interest at 18% per annum.

The Application was filed on the 22nd July, 1988. A reply has been filed by the Respondents where three preliminary objections have been raised; firstly, the ICAR is a Society under the Societies Registration Act and has its own rules and Bye-laws, Although it has adopted certain Govt. Rules and Regulations in case where it does not have its own Rules. The service condition of the ICAR and its employees is purely contractual. The employee having discharged his obligation under the Bond there is a concluded/satisfied contract. The O.A. is thus bad in law and hit by the doctrine of estoppel; secondly, the O.A. is barred by time. The decision of the Respondent dated 6.7.87 was conveyed to the applicant on 17.7.87/ the filing of the O.A. on 22.7.1988 is barred by limitation; thirdly, the O.A. is bad in law, untenable and beyond the jurisdiction of the Tribunal.

In regard to the merits it was stated in the reply that the orders have been passed by the Respondents in accordance with conditions of employment and the furnishing of a surety-bond in the sum of Rs.12,000/- by way of liquidated damages was one of the conditions of employment. Since the applicant failed to

12

serve the CMFRI for four years period from the date of joining, viz., 12.3.1986, he was rightly called upon to discharge his obligation under the Surety Bond. Reference was made to Bye-Law No. 30(a) of the ICAR Rules & Bye-Laws. It was stated that the ICAR is a specialised organisation in the field of Research and Agriculture and in order to select candidates for service, it had to take help of experts and has to spend a lot on such service further, for the training and development of scientists a lot of money has to be spent. The Surety Bond in favour of the respondent is based upon public interest/service. The applicant having duly accepted the terms and conditions of service/Surety Bond and having discharged his obligation under the said Bond he cannot contend otherwise and approbate and reprobate and that too belatedly. Lastly, any interference by the Tribunal would result in interfering in the internal function/administration of the respondent organisation.

We have heard learned counsel for the parties at some length. There is no doubt that the applicant executed a Surety Bond as a part of the terms and conditions of his service. However, it has to be noticed that the applicant was compelled to deposit the full amount of the Bond with the CMFRI as the Respondent declined to accede to his prayer of resignation to join the IFS unless the full amount of Bond was deposited. The facts appearing from the record bear this out. It will be noticed that the applicant was in the CMFRI only for a period of less than sixteen months when he resigned on 2.7.1987. He had resigned in order to join an All India Service upon selection in a competitive examination conducted by the UPSC.

It is not necessary to go into the question whether the CMFRI was within its rights to enforce the Bond on account

of the resignation of the applicant within a period of four years. The question before us is whether the applicant's prayer for waiver of deposit of Rs.12,000/- was maintainable or not. Firstly, the applicant was in CMFRI from 12.5.1986 to 2.7.1987 and secondly, the Rules of the Central Govt. were applicable to ICAR and its constituent units and their being no Rules to the contrary of the ICAR, the applicant was entitled to waiver subject to his execution of a fresh Bond for the remaining period to the new employer. The Circular No. MHA-OM-28021/1/84-Estt(C) dated 14.11.1984 clearly provides, where a Central Govt. servant resigns ^{join} from one service to/another the payment of Bond amount should not be enforced.

Learned counsel for the applicant had urged that the ICAR although a society registered under the Societies Registration Act was fully financed and controlled by the Central Govt. and his Chairman was the Minister of Agriculture the Board of Management appointed by the Central Govt., it was a Central Govt. organisation and all the Rules issued by the Central Govt. would be applicable mutatis mutandis provided there was no rule to the contrary by the ICAR. On the question of waiver, we have not been shown any Rule contrary to the Rules made by the Central Govt. The plea of the ICAR is that it was a contract entered into by the ICAR/CMFRI and it was a contractual obligation and enforceable in law and consequently, the Central Govt. did not enter into picture at all. It was a matter between the applicant and the Respondent CMFRI.

We are unable to agree with the learned counsel for the Respondents. The entire matter has to be taken in a clear perspective. There is not an iota of doubt in our

mind that the applicant could be compelled to pay the full money of the Bond executed by him in case he left the ICAR/CMFRI within a period of four years of joining his service. But there is nothing to show that the Rule of the Central Govt. about the waiver of the Bond was inapplicable. For this, there had to be a specific Rule that notwithstanding the Rule made by the Central Govt. the same would have no application where a Surety-Bond is executed. We are of the view that the Rule made by the Central Govt. would have full application in every case irrespective of the contractual nature of the Bond, for the applicant was leaving one/Central Govt. to join Central Govt. service. He was not leaving the CMFRI to join any private organisation. He was, as a matter of fact, joining a well known All India Service.

What induces us to pause and consider is the effect of such action on the part of ICAR/CMFRI with the employee who is on thresh-hold of a new career with the Central Govt. He sat for the examination earlier and was waiting for his result. He joined the CMFRI meanwhile. As soon as the IFS result was announced and the applicant was selected for the same, he approached the respondents to grant his prayer for resignation, so that he may join the Indian Forest Service. The act of the Respondents smacks of unreasonableness when they demanded Rs.12000/- as a condition for granting permission to resign. Unless he was relieved, he could not join the IFS. The Ministry of Home Affairs O.M. clearly stipulates that, where a Central Govt. servant resigns from one service to join another, he has to execute a fresh Bond for the remaining period. It also indicates that his earlier Bond was not to be enforced.

The Respondents could have waived the enforcement of Bond or even allowed a refund of the same amount taking into consideration that the applicant had opted for joining an All

India Service, which was superior to that of a Scientist in the CMFRI. It is a fundamental right of citizen to pursue the career/profession of his choice. He is entitled to better his lot and future career. There is no bar in doing so. Even if there is any bar, it had to be a reasonable one.

The argument of the learned counsel for the Respondents was that the entire transaction was one of contract and this could not be off-set on the ground of sympathy or any other similar consideration. The CMFRI had a right to enforce the contract and it has ~~xxxxx~~ done so. The applicant had no right to ask for the refund the amount of Rs.12,000/-. Respondents could enforce the contract.

There is nothing to show that it was mandatory for the Respondents to enforce the contract in each case. More so, when the applicant was resigning to join an All India Service - another Central Govt. service - and he was seeking to better his service prospect. He had a right to join another service and the Bond did not preclude him from doing so. The terms of the Bond gave a right to the Respondents to enforce the Bond, but did not make it obligatory on the Respondents to enforce in every case. The enforcement of the Bond in the present case smacks of a punishment for leaving the CMFRI. We cannot, but observe that this was wholly unfair and unreasonable in the circumstances of the case.

Learned counsel for the Respondents had raised the plea that the Application was barred by limitation as the O.A. was filed on 22.7.1988 and the decision of the respondent was conveyed to the applicant on 17.7.1987. Section 21(1)(a) provides that, where a final order such as is mentioned in

clause (a) of sub-section(2) of Section 20 has been passed and the applicant files an Application under Section 19 within one year from the date of final order, it is within limitation. The order dated 6.7.1987 was conveyed to the applicant on 17.7.1987 and he had filed the Application within one year and five days of the date of communication of the order. Sub-section 3 of Section 21 has given power to the Tribunal to condone the delay if the applicant had sufficient cause for not making the application within such period.

Having heard learned counsel for the parties, we are satisfied that the period of five days beyond the period of one year is liable to be condoned and we do so, keeping in view the facts and circumstances of the case.

This objection of the respondents is over-ruled.

In view of the reasons given above, we allow the O.A. and direct the respondents to refund a sum of Rs. 12,000/- paid unto the CMFRI by the applicant, within a period of two months from the date of receipt of a copy of this order subject to the applicant executing a fresh Bond with the new employer, within a period of six weeks from today. We order accordingly.

There will be no order as to costs.

Declaratory 1/10/89
(D.K. CHAKRAVORTY)
MEMBER (A)

AMITAV BANERJEE, 10.91
(AMITAV BANERJEE),
CHAIRMAN