

(13)

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 606/2004

New Delhi this the 13th day of January, 2005

Hon'ble Mrs. Meera Chhibber, Member (J)

J.K. Thapar
S/o Shri Amar Nath Thapar,
B-305, Rail Vihar,
Sector 15 Pt. II,
Jharsa Road,
Gurgaon-122001 (Haryana).

.... **Applicant**

(By Advocate Shri R.K. Sarkar)

Versus

Union of India, through

1. General Manager,
Northern Railway,
Headquarters Office,
Baroda House,
New Delhi – 110 001.

2. F.A. & C.A.O. (Construction) C-1,
Northern Railway,
Kashmere Gate,
Delhi – 110 006.

3. Sr. Divisional Accounts Officer,
Allahabad Division,
North-Central Railway,
Allahabad (UP).

...**Respondents**

(By Advocate: Shri R.V.Sinha)

ORDER

By this O.A., applicant has sought directions to the respondents to refund him Rs. 9,785.16 and Rs. 3162/- along with interest @ 18% per annum from 1.4.2001 till the date of payment to him as these amounts have been recovered from his gratuity illegally and arbitrarily.

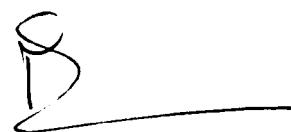
2. It is submitted by the applicant that he had gone on deputation to the U.P. State Cement Corporation Limited for a period from 18.02.1980 to 25.2.1981 as per the terms



(14)

and conditions stated on pages 17 and 20 and as per those terms, the usual contributions were to be deposited by the borrowing department. The Railways did not take appropriate action at the relevant time in case the contributions were not made by the U.P State Cement Corporation Limited and it was only when the applicant was to retire on superannuation on 31.3.2001 that the amounts, as mentioned above, were deducted from his gratuity. He has challenged the ^{recovery of} ~~above~~ amounts from his gratuity, on the ground that no show cause notice was given to him before effecting recoveries from his gratuity. Therefore, these recoveries are bad in law. To substantiate his claim, the applicant relied on the judgement given by the Hon'ble Supreme Court reported in 1994 SCC (L&S) 130 in the case of ***Bhagwan Shukla vs. Union of India & Ors.*** He contended that it was the obligation of U.P State Cement Corporation Limited to send the amount of Foreign Service Contribution and in case they have not remitted the said amount, liability cannot be shifted to the applicant nor can he be held as guarantor for the U.P State Cement Corporation Limited. His whole argument was that since under the terms and conditions of deputation, U.P State Cement Corporation Limited had consented to send the Foreign Service Contribution, therefore, it was their liability to send it and the duty of Railway Authorities to recover the same from the said Corporation and simply because Railway Authorities failed to comply with their part of duty, applicant cannot be penalised and made to pay the said amount along with interest, that too after a period of over about 20 years.

3. Respondents, on the other hand, have submitted that applicant was fully aware that ~~he~~ his Foreign Service Contribution had not been made by the U.P State Cement Corporation Limited, which is evident from his own representations given to the authorities from time to time, therefore, it is wrong to suggest that applicant did not have opportunity to defend himself before the recoveries were made. On the contrary, counsel for the respondents submitted that applicant had also given detailed representations, which were duly considered by the authorities and a speaking order was passed by the respondents, which



has not even been challenged by the applicant. He cannot get the relief as prayed unless he challenges the validity of the speaking order passed by the respondents. He further submitted that applicant was a senior officer and he should have seen to it that the contributions are paid by the U.P State Cement Corporation Limited in time to avoid any inconvenience at the later stage. In any case, the amounts had to be paid and in case the U.P. State Cement Corporation had not sent the Foreign Service Contributions, the same had to be deducted from his gratuity in accordance with the rules as mentioned under the Indian Railway Establishment Code (IREC). He has relied on paras 2006 to 2012 of IREC.

4. I have heard both the counsel and perused the pleadings as well.

5. From the perusal of the documents which have been annexed by the applicant with this OA, it is clear that applicant was duly informed as back as in 1997 that the Foreign Service Contribution during the period when he was under deputation with the U.P State Cement Corporation Limited had not been remitted to the Railway Authorities and he had himself written letter to the U.P State Cement Corporation Limited to this effect on 1.12.2000. Therefore, it cannot be stated by the applicant that he was taken unaware or the recoveries were made from his gratuity without putting him on notice. In fact, the Pay & Accounts Officer of Railway Board had written a letter to the Sr. DAO, Northern Railway, Allahabad, with copy to the applicant as back as on 23.09.1997 (page 26) wherein request was made to get the payments of Foreign Service Contributions from the U.P State Cement Corporation Limited as the same had not yet been deposited in Railway Account. The applicant had also in one of his representations agreed under protest to deposit the amount of Rs. 3850/- towards outstanding Foreign Service Contributions but had requested to waive of the interest (25 page). Therefore, in these circumstances, it is not open to the applicant to suggest that recoveries were made from his gratuity without putting him on notice. The judgment relied upon by the applicant's counsel would, therefore, not be applicable in the present facts of case. Moreover, it is also seen that when applicant had given a detailed representation, the same was duly considered by the office of Northern



16

Railway, which had once again informed the applicant that as per service records, there is no mention in the documents about the payment of Foreign Service Contributions for the period from 18-02-1980 to 25-2-1981 by the U.P State Cement Corporation Limited. Therefore, in the absence of any details about the Foreign Service Contributions, the amount of Foreign Service Contribution had correctly been deducted by the Personnel Branch as per details annexed. It was, however, once again clarified that in case applicant can furnish any documentary evidence to show that the Foreign Service Contribution was remitted by the U.P State Cement Corporation Limited to the Railways, his case could still be re-considered (page 13). In view of the above, contention of the applicant that he was not put on notice before making the recoveries is rejected.

6. Coming to the next point as to whether applicant could be made to pay the amount of Foreign Service Contributions along with interest, I would have to see the relevant rules and the terms and conditions of the deputation. It is correct that as per para 7 of the terms and conditions, the borrowing organization was under obligation to pay to the Railway Administration the usual contributions, as laid down under the Railway Rules, which was to be collected by the Chief Accounts Officer of the concerned Railways but this paragraph will have to be read with the various paras of IREC. The relevant extract of para 2006 for facility of reference reads as under:

“2006 –Foreign Service Contributions.

- (a) While a railway servant is in foreign service, contribution towards the cost of his pension must be paid to general revenues on his behalf.
- (b) x x x x x x x x x x x x x
- (c) Contributions due under clause (a) and (b) above shall be paid by the railway servant himself unless the foreign employer consents to pay them. They shall not be payable during leave taken while in foreign service.

2007 – Rates of Contributions.-

The rate of contributions payable on account of pension and leave-salary shall be as prescribed in Appendix-I.

25

(17)

2008 - x x x x x x x x x x x x x x x x

2009 (1) - **Procedure for payment of contribution.** A copy of the orders sanctioning a railway servant's transfer to foreign service must always be communicated to the Accounts Officer by the authority by whom the transfer is sanctioned. The railway servant himself should, without delay, communicate a copy to the Accounts Officer and take his instructions as to the officer to whom he is to account for the contribution; report to the latter officer the time and date of all transfers of charge to which he is a party when proceeding on, while in, and on return from, foreign service and furnish from time to time particulars regarding his pay in foreign service, leave taken by him, his postal address and any other information which that Accounts Officer may require.

(2) x x x x x x x x

2010 - x x x x x x x x x x

2011- x x x x x x x x x x x x

2012 - **Interest or overdue contributions.** - (1) Contribution for leave salary or pension due in respect of a railway servant on foreign service may be paid annually within 15 days from the end of each financial year or at the end of the foreign service, if the deputation on foreign service expires before the end of a financial year, and if the payment is not made within the said period, interest must be paid to Government on the unpaid contribution, unless it is specifically remitted by the President at the rate of two paise a day per Rs.100 from the date of expiry of the period of 15 days upto the date on which the contribution is finally paid. The interest shall be paid by the railway servant or the foreign employer according as the contribution is paid by the former or the latter".

7. A perusal of the above paragraphs makes it very clear that the Foreign Service Contributions are required to be paid to general revenues on behalf of Railway servant by the borrowing department because the words used in para 2006 state that the Foreign Service Contribution towards the cost of railway servant's pension must be paid to general revenues on his behalf, meaning thereby that the contributions ~~are~~ ^{will be} to be made by the borrowing department on behalf of the applicant. Sub clause (c) of para 2006 further clarifies that the Foreign Service Contributions shall be paid by the railway servant himself unless the foreign service employer consents to pay them, meaning thereby that in case the foreign employer does not pay, the primary duty shall still be with the railway servant to make the said contributions. This paragraph was being read by the applicant to suggest that



since the borrowing department had consented to pay the contributions, therefore, he cannot be made to pay the said contributions in case they do not make the payments. I am afraid such an interpretation cannot be accepted because this clause does not say that the responsibility is only of the foreign employer and this has to be read with sub clause (a) which makes it clear that these contributions are made by the borrowing department on behalf of the railway servant who goes on deputation. Therefore, even in those cases where the borrowing department though consents to pay the contribution but ultimately if they do not pay it, the railway servant cannot get himself absolved from his liability to make the contributions good in the revenues of Railway Authorities. It is further relevant to see that in para 2012, it is clarified that if the payment is not made within the stipulated period, interest must be paid to the government on the unpaid contributions by the railway servant or the foreign employer as the contribution is paid by the former or the latter. The word 'or' in para 2012 gets importance because here it gets further clarified that the interest shall be paid either by the railway servant himself or the foreign employer in case the contribution is not paid in time. Therefore, the liability remains either with the borrowing department or the railway servant himself. In view of the above discussion, I am satisfied that the applicant's contention that the Foreign Service Contributions had to be paid only by the borrowing department and he cannot be made to pay the same, cannot be accepted. In fact, a perusal of the letter dated 21.11.2001 states categorically that the amount of Foreign Service Contribution was to be deducted from his salary for the period from 18-2-1980 to 25-2-1981 but the same was not done. This fact has not been disputed by the applicant in his O.A. He has nowhere stated in the entire O.A. that the amount of Foreign Service Contributions was not to be deducted from his salary though at the time of argument counsel for the applicant did suggest so. This letter as well as the letter dated 20.5.2002 has, in fact, not been challenged by the applicant. His only grievance is that since this amount was to be remitted by the U.P. State Cement Corporation and applicant was nowhere in picture, therefore, this amount could not have been deducted from his



(19)

gratuity. He has nowhere disputed the correctness of the contents of letter dated 21.11.2001. Therefore, in view of the explanation as given to the above ~~on~~ various paras of IREC, applicant's contention cannot be accepted. Since it is a ~~genuine~~ ^{specific} case of the respondents that U.P. State Cement Corporation had not remitted the amount on account of Foreign Service Contributions, coupled with the fact that applicant had himself offered that the amount of Foreign Service Contributions for the said period should be deducted from his salary, I cannot find any illegality in the orders passed by the respondents as far as the deductions of amount on account of Foreign Service Contribution along with interest are concerned. Therefore, his argument to that extent is also rejected. There is, however, one aspect of the matter which respondent's counsel was not in a position to explain. That is with regard to the amount of Rs.3162/-.

Counsel for the applicant had relied on respondent's own Annexure at page 12 of counter affidavit, namely, the letter written by U.P. State Cement Corporation, addressed to the Sr. Divisional Accounts Officer, Northern Railway, Allahabad, wherein they had clearly stated that since the amount of advance outstanding against Shri J.K. Thapar and Shri S.N. Nizam had not been recovered by them, ~~therefore~~, ^{therefore} in spite of several requests, the outstanding advance has been adjusted in this bill. Hence, the recovery against the above need not be made. Counsel for the respondents could not explain this letter. In case the advance amount had already been adjusted by the U.P. State Cement Corporation and why they ~~had~~ written categorically to the Railway authorities not to make any recoveries against the applicant, could not be explained. Therefore, to this extent I find that the respondents have not been in a position to clarify the position. Accordingly, to the limited extent of recovery of amount of Rs.3161/-, the matter is remitted back to the authorities concerned, with a direction to apply their mind to this aspect of the matter and decide the same within a period of two months from the date of receipt of copy of this order, by passing a reasoned and speaking order under intimation to the applicant. In case the amount ~~had~~ already been recovered from the applicant, the same cannot be recovered over and above again the second time. In





case respondents have an explanation for the letter annexed by themselves at Page 12, then they should pass a reasoned and speaking order, as directed above after hearing the applicant in the matter.

8. With the above direction, this O.A. is disposed of. No order as to costs.


(MRS. MEERA CHHIBBER)
MEMEBR (J)

'SRD'