

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
XXXWXXXDXLXXX

O.A. No.
XXXXXX

472 OF 1986

DATE OF DECISION

6-6-89

Shri Jaydev Singh Bakshi Petitioner

Party - in- Person Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

RAM :

Hon'ble Mr. P.H. Trivedi : Vice Chairman

Hon'ble Mr. P.M. Joshi : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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?

Shri Jaydev Singh Bakshi
Ex. Traffic Inspector (Planning),
Western Railway,
Baroda Division,
Baroda.

⑨
... Applicant

(Party-in-Person)

Versus

1. Union of India,
Represented by Secretary,
Ministry of Railway,
Government of India,
New Delhi.
2. General Manager,
Western Railway,
Churchgate,
Bombay.
3. Divisional Railway Manager,
Baroda Division,
Western Railway,
Pratapnagar,
Baroda.

... Respondents

(Advocate : Shri N.S. Shevde)

JUDGEMENT

O.A./472/86

Date : 6-6-89

Per : Hon'ble Mr. P.H. Trivedi : Vice Chairman

The essential facts are lucidly set out in the written statement of reply of the respondents. The relevant portion of which for the sake of convenience is reproduced as below :

The applicant was appointed in railway service as Traffic Apprentice on 15.3.1962. On completion of apprenticeship he was appointed as Assistant Train Controller in scale Rs.250-380 on 18.3.1965. While working in scale Rs.250-380(A), he was posted to work as Vigilance Inspector in scale Rs.370-425(A) under the Vigilance Organisation of the Railway. The post of Vigilance Inspector is a tenure post. After returning from the Vigilance Organisation, he was posted to officiate as Traffic Inspector in scale 370-475(A) vide order

No.ET/839/3/3 (Pt.III) dt.22.11.74. Thereafter he was posted to officiate as Traffic Inspector in scale Rs.455-700(R) on ad hoc basis vide order No.ET/839/3/3 (P.iii) dt.16.6.76. Subsequently he was promoted to officiate as Divisional Traffic Inspector scale Rs.700-900(R) purely on ad hoc basis vide Order No.ET/839/3/3 (P.iii) dt.20.1.77 with effect from 1.1.78. The post of Traffic Inspector scale Rs.700-900(R) is a selection post. The applicant has not passed the selection for the post of Traffic Inspector scale Rs.700-900 (R).

(B) Before joining the railway service the applicant was working in Air Force from 10.7.1950 to 10.7.1959 on regular basis and the said period was accepted for the purpose of pensionary benefits.

(C) While the applicant was officiating as Divisional Traffic Inspector scale Rs.700-900(R) purely on ad hoc basis, Gujarat Narmada Valley Fertilizers Company Limited which is known as GNFC made a request to the railway administration vide their letter No.PD/1099 dt.21.8.1979 (Annexure 'A' to the application) asking for the services of the applicant on deputation to work with them as Assistant Administrative Officer (Traffic) in scale Rs. 700-50-1200 plus all other allowances and perquisites such as D.A. Rs.300/-; HRA upto 20%, vehicle allowance Rs.120/- etc. etc. The said post is in Officer's grade with all benefits admissible under the Company's rules. It was also indicated in the said letter dt.21.8.1979 that the applicant is willing to join them on the above post on deputation. It was further indicated in the said letter that GNFC is in the Joint Sector. It gave an impression that GNFC is a public sector undertaking. It did not disclose that it is a private Company. It had further stated in the aforesaid letter dt.21.8.1979 that it has been jointly promoted by the Govt. of Gujarat and Gujarat State Fertilizers Co. Since the railway administration took the GNFC as a public sector

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undertaking, it was decided to concede their request and send the applicant to the GNFC on deputation initially for a period of one year, under the normal terms and conditions for deputation to public sector undertaking. The applicant was thus relieved on 27.9.79 vide order No. ET/296/4/1 dt. 4.11.79 to join the GNFC on deputation. Even though the applicant had very close contact with the GNFC yet he did not disclose to the railway administration that GNFC is a private Co. and not a public section undertaking. The deputation period of the applicant was further extended upto 27.9.1982 on the usual terms and conditions of deputation. The applicant was permanently absorbed in GNFC from 27.9.1982. The applicant in the meantime submitted application for voluntary retirement from railway service to join the GNFC on regular basis (Annexure E to the application). The voluntary retirement asked for by the applicant was accepted by the railway administration with effect from 27.9.1982. A.N. vide Memorandum dated 27.9.1982 (Annexure F to the application) on the belief that GNFC is a public sector undertaking and not a private Co. Thereafter his settlement dues were worked out and necessary P.P.O.No. BRC/E/789/20/9/1248 dt. 11.9.85 was also prepared. In the meantime Accounts Department has raised a query as to whether GNFC is a public sector undertaking or a private Co. A reference was therefore, made to GNFC Bharuch vide letter No. E/789/11/3/ 1169 dt. 24.12.83 seeking clarification from them as to whether GNFC is a public Sector undertaking or otherwise. In response to the said reference, GNFC has replied vide their letter No. PD/9567 dt. 26.12.83 that they are in joint sector and have been promoted by the Govt. of Gujarat and Gujarat State Fertilizers Co. Ltd. in which the Govt. of Gujarat is holding 25% equity shares while the GSFC is holding 49%. Annexed hereto and marked Annexure 'A' is a copy of the said letter dt. 26.12.83. Since the reply given by the GNFC was not clear as to whether it is a public sector undertaking or

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otherwise, the matter was referred to Deputy Legal Adviser, Ministry of Law & Justice, Bombay who clarified vide his Note No. 766-ADV(BOM) dt. 30.3.85 that GNFC is a private Co. and not a public sector undertaking as erroneously thought by the railway administration. The matter was then examined by the General Manager, W.Rly., Bombay in consultation with Financial Adviser & Chief Accounts Officer and it was decided as under : -

- (i) GM's ex-post-facto sanction to regularise the deputation of Shri Jaidev Baxi to GNFC being technically/legally defined as Private Co. be obtained.
- (ii) His voluntary retirement with effect from 27.9.82 which was accepted in terms of Board's letter No.E (P&A) I-77/RT-46 dt. 9.11.77 (P.12 A) is not in order in view of the fact that the scheme under voluntary retirement under these orders were not to apply to those railway servants on deputation to Autonomous Bodies/Public Sector Undertaking etc. vide para (xi) of the said letter. It has been suggested that the administration should take unilateral decision considering the case of Shri Baxi as absorption while on deputation to GNFC as against voluntary retirement from Railway service with effect from 27.9.1982 declaring the absorption to be in the public interest in terms of Board's letter dated 11.7.73 P.12 c.
- (iii) Pensionary benefits to Shri Baxi will be governed by Board's letters dated 18.2.70 (P.10 A) 10.9.71 (P.10 B) 11.7.73 (P.12 c) as amended from time to time."

General Manager's ex-post-facto sanction has been communicated to the deputation of Shri Baxi to GNFC from 28.9.79 till he is absorbed in GNFC and that the same is in public interest. It has also been decided by the General Manager to treat the voluntary retirement of Shri Baxi from 27.2.82 as cancelled. In this connection Dy. Chief Accounts Officer (G)'s note on the subject is annexed as Annexure 'B' which makes the point clear. The applicant was thereupon advised vide letter dated 6.8.1985 (Annexure V to the application) that GM has accorded ex post facto sanction for his deputation in GNFC. The applicant was further advised that his voluntary retirement with effect

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from 27.9.1982 is treated as cancelled as he is treated as having been absorbed in GNFC on 27.9.82 terminating his lien from the railway from that date. His case was therefore to be dealt with under the orders applicable to those who went on deputation to Autonomous Bodies/Public Sector undertaking under which he is not entitled to weightage in qualifying service. Under the provisions of the above orders the applicant was entitled to choose any one of the following :

(a) receiving the monthly pension and DCRG under the usual rules

OR

(b) receiving the gratuity and lumpsum-amount in lieu of pension worked out with reference to the communication table obtaining on the date from which the commuted value becomes payable.

The commutation table is appended in the Manual of Pension Rules. The applicant was advised to choose any one of the above alternatives and exercise his option accordingly within 15 days of the aforesaid letter dated 6.8.1985. It was also indicated in the above letter that if the applicant does not exercise his option within 15 days he will be deemed to have exercised his option for item (b) and will thus be automatically governed by alternative (b). It was also made clear in the above letter that if he chooses alternative (b) he will have to appear before the Medical Board for the purpose of commutation of pension as per rules.

(D) Since the applicant was anxious to have his settlement finalised early, his pension papers were sent to Accounts on 6.8.85 and the DCRG and pension have been passed for payment by the Accounts under P.P.O.No. BRC/E/789/20/9/248 dated 11.9.85 as under : -

i) DCRG Rs.15918-50
Less Rly.
claim 2771-15
Rs.13147-35

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ii) Pension without
ad hoc relief.

Rs.472/-p.m.w.e.f.
27.9.82 AN payable
through Bank of
Baroda GNFC Branch
Bharuch Saving A/c
No.1399.

iii) Family pension Rs.260-00p.m. From the
Ad hoc relief Rs.290-00p.m. next date
Total Rs.559-00p.m.

of pens-
ioner's
death for
seven yrs
or up to
27.9.89
whichever
is earli-
er and
thereaft-
er Rs.130
+ adhoc
relief
Rs.150/-
=Rs.280/-

(E) In the meantime, the applicant had expressed his desire to come back to railway department vide his application dated 20.8.1985. Annexed hereto and marked Annexure 'C' is the copy of the said letter dated 20.8.1985. The applicant was therefore, advised vide letter No.ET/J/201 dated 8.4.1986 (Annexure W to the application) to take a firm and final decision as to whether

(a) he desires to get permanently absorbed in
GNFC

OR

(b) he desires to get repatriated to railway. He was advised that in case he opts for item (a) Foreign Service Contribution (FSC) charges beyond 27.9.82 till the date of absorption so fixed by the GNFC should be paid by the GNFC and in case it denies the same should be paid by him to count the service from 28.9.82 to the date of absorption. In case he opts for item (b) he has to apply for ^{DRM} repatriation/through GNFC and FSC charges from 28.9.82 till the date of repatriation should be paid by GNFC or by him if the former denies the same. In response to the above letter the applicant informed vide his letter dt.23.4.86 that he was already absorbed in the GNFC and hence the question of further absorption does not arise. He has not asked for repatriation to railway.

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(F) The applicant has advised vide his letter dated 30.9.1986 that he exercises his option that he may be treated as absorbed in GNFC with effect from 28.9.1982. Annexed hereto and marked Annexure 'E' is a copy of the said letter. In view of his option as above, the pension, DCRG etc. already fixed in his favour as above stands good. The DCRG amount of Rs.15918-50 was paid to him vide C06 No.809 and C07 No.153 dt. 26.8.85. The PPO No. BRG/E789/20/4/9/1248 dt. 21.8.85 was issued for payment of pension through Bank. (Annexure G to the application).

(G) The applicant was deputed to GNFC which is a private company (Annexure 'DA'). As per para 3 (Ex.11) of Rly. Bd's letter dt. 9.11.77. The scheme of voluntary retirement will not apply to those who are on deputation to autonomous body/public sector undertakings. The grant of voluntary retirement to the applicant was therefore not correct and hence cancelled.

3. As regards para 6.1, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, of the application, the true facts of the case have been narrated in para 2 above. All the averments made therein contrary to the factual position narrated in para 2 above are denied.

4. The applicant has been extended all the benefits as admissible under the rules. Eventhough he joined a private Co. the period from 28.9.79 to 27.9.82 has been treated as deputation in public interest and his lien was maintained with the railway administration till 27.9.82 ie. the date on which he was permanently absorbed in GNFC. His pension etc. were also fixed accordingly. He had also received the DCRG as mentioned above. From the various correspondence enclosed as annexures, it can be seen that the railway administration has extended the maximum benefits as admissible under the rules to the applicant which under the normal circumstances would not have been given to him.

During the hearing, the petitioner restricted his relief to the cancellation of the order dt. 6.8.1985 annexed at Annexure V which is as follows: -

"Sub : Settlement final of Shri J.S.Baxi
Ex. DTI BRC.

Since your deputation to the GNFC being a private company was not in order, GM has accorded ex-post facto sanction for your deputation in GNFC.

Further your voluntary retirement with effect from 27.9.1982 is now treated as cancelled and treated as having absorbed in GNFC on 27.9.1982 terminating your lien from the Railway from that date.

In view of the above position, your voluntary retirement with effect from 27.9.1982 which was accepted is now cancelled and your case will be dealt with under those orders who went on deputation to Autonomous Bodies/Public Sector Undertaking and will not be entitled for weightage in qualifying service.

As per provision under the above orders, you are entitled to choose following alternative -

(a) receiving the monthly pension and DCRG under the usual rules

or

(b) receiving the gratuity and lump-sum-amount in lieu of pension worked out with reference to the commutation table obtaining on the date from which the commuted value becomes payable.

If no option is exercised within fifteen days, you will automatically governed in alternative (b).

Please note that you will have to appear before the Medical Board for the purpose of commutation of pension."

2. The respondents claim that because the Gujarat Narmada Valley Fertilizer Company (hereinafter called as G.N.F.C.) had stated that it is joint sector and that nothing has been stated by the petitioner to the contrary, the respondents were misled into believing that the company is in the private sector. The petitioner's case is that in fact this company is a private company as defined under the Companies Act, that on cancellation of the orders of voluntary retirement with effect from 27.9.1982 unilaterally after 3 years of its being allowed and being forced to accept the alternative offer under the impugned orders which robs the petitioner of the weightage in qualifying service, the petitioner is unjustly, arbitrarily, unilaterally and illegally deprived of his dues. The respondents on the other hand have taken the stand that the error of treating the new employer of the petitioner as a private company was discovered on the clarification sought by the Accounts Department and thereupon the defective sanction given was corrected by post fac-to sanction to regularise the deputation of the petitioner and the petitioner was allowed to be absorbed from 27.9.1982 on declaring the absorption to be in public interest and his voluntary retirement was cancelled and the weightage given for qualifying service which was available under the scheme did not apply to those railway servant who went on deputation in Autonomous Bodies/ Public Sector wide para 11 of the letter dt. 9.11.1977. Accordingly, the petitioner was offered settlement of his dues and no injustice therefore has been done to him.

3. This case, therefore, turns upon the interpretation of the GNFC being regarded as an Autonomous Body/ Public Sector Company to which the scheme of voluntary retirement is held not to apply in terms of para 11 of Railway Board letter dt. 9.11.1987. This para is as under:

"IX) The scheme of voluntary retirement under these orders will also not apply to those railway servants on deputation to autonomous bodies/ public sector undertaking etc. who propose to get absorbed in the autonomous bodies/public undertakings etc. The absorption of railway servants on deputation to public undertakings autonomous bodies etc. in such autonomous bodies undertakings etc. and the grant of retirement benefits to them in respect of their service under Govt. will continued to be governed by the separate set of instructions issued by the Ministry of Railways in this regard."

4. The question whether this GNFC is a body in which the Government has a substantial financial interest was examined and answered by memo dt. 17.4.1985 as follows :-

"The issue was referred to the Ministry of law and Justice, Dept. of Legal Affairs, Branch Secretariat, Bombay and their opinion is reproduced below : -

"Section 617 of the Companies Act defines (Government Company) - For the purpose of (this act) Government Company means any company in which not less than fifty one percent of the (paid-up share capital) is held by the Central Govt. or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments, (and includes a company which is a subsidiary of a Government Company as thus defined)."

A Government Company, whether it is wholly or partially controlled by Government, will not ordinarily be presumed to be an agent of the State, even though the directors might be appointed by a Ministry of the Govt. and act according to his directions and the conduct of the business of the company is also supervised by the Govt.

But it will be so inferred if the company performs any Governmental functions as distinct from commercial functions. *Heavy Engineering Mazdoor Union V. State of Bihar*, (1969) 39 Com. Cases 905 (S.C.).

Where an erstwhile non-Government company becomes a Government company by reasons of the Central and/or any State Government acquiring and holding 51% of its paid-up share capital, all the subsidiaries of such company also become Government companies.

On the facts stated by the department in their referring note and after examining the Memorandum and Article of Association of Gujarat Narmada Valley Fertiliser Co. Ltd. it could not be said that the Govt. of Gujarat holds not less than 51% share as required under section 617.

The reference is answered accordingly."

5. It can be stated that the Government of Gujarat directly or indirectly holds a majority share and therefore, the company is a Govt. company within the meaning of Section 17 of the Companies Act. That is a Govt. company and the petitioner's case is governed in terms of para 11 of circular dt. 9.11.1977 cannot be considered to be wrong and to that extent, the respondents' stand is validly taken and the petitioner cannot be upheld on the ground. On the other hand there is nothing in conduct

of the petitioner to show that he had deliberately misled the respondents into the position that his new employer was a private company. The respondent have only to thank the negligence and remissness of their staff for the belief that G.N.F.C. was a private company because nothing to that effect was stated by the petitioner or by the G.N.F.C. and that strictly speaking the representation that the company is in joint sector was correct as Gujarat Government directly holds only a minority share holding in it. Accordingly the respondents could have been upheld for treating the petitioner as not Governed by the voluntary retirement scheme, had they taken the correct decision from the begining. However, they did not rectify their error for three years and when they did so, they issued relevant orders unilaterally. It is not their case that they called upon the petitioner at any stage to explain why they proposed to cancel their earlier orders sanctioning voluntary retirement. If the petitioner acted upon their sanctioning of voluntary retirement, he must be held to be justified to do so in the belief that the weightage of qualifying service would be available to him in terms of the scheme for voluntary retirement and if such weightage of qualifying was to be denied to him, nothing stopped the respondents from making such a stipulation either to his new employer or to the petitioner while accepting his voluntary retirement. Between two parties of such dispropotionate powers and resources in terms of knowledge of rules and in the light of lack of any evidence of misrepresentation or fraud, we cannot but hold that the respondents are estopped from depriving

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the petitioner of the benefit of the weightage of qualifying service which would be available to him under the scheme of voluntary retirement.

6. We therefore, hold that so far as the interpretation of the G.N.F.C. being Autonomous body/Public Sector company, the respondents' decision that it is Autonomous Body/Public Sector undertaking is correct but that by virtue of acceptance of the voluntary retirement and sanction thereof and the long period of time before this decision was revised, the petitioner is entitled to the benefit of weightage of qualifying service under that scheme. We direct that this retirement benefits be accordingly calculated and be paid to him within a period of 4 months from the date of this order.

7. We therefore, direct that the order dated 6-8-1985 is quashed and set aside. The respondents are directed to pass fresh orders allowing the petitioner voluntary retirement from 29-9-1982 with benefits of the voluntary retirement being applicable to him.

8. We find that the petition succeeds to the extent stated above. No order as to costs.


(P.H. Trivedi)
Vice Chairman


(P.M. Joshi)
Judicial Member