

29
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.537/2004

Cuttack this the 22nd day of August, 2008

Bibhuti Bhusan Nandy

.....

Applicant

Vrs.

Union of India and others

.....

Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not ?
- 2) Whether it be sent to the Principal Bench of the CAT or not?

(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER

(K. THANKAPPAN)
JUDICIAL MEMBER

30

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.537/2004

Cuttack this the 22nd day of August, 2008

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

...

Bibhuti Bhusan Nandy, aged about 65 years, S/o. late Shyamasundar Nandy, formerly Director General Indo Tibetan Boarder Police, presently residing at E-30/1, New Garia Co-operative Housing Society, Kolkata - 700 094, West Bengal

...Applicant

By the Advocates: M/s.J.Pattnaik

R.K.Mohapatra,

B.Mohanty,

M.Mohapatra

-VERSUS-

1. Union of India represented through Secretary, Ministry of Home Affairs, North Block, New Delhi-110 001
2. Secretary, Department of Personnel Training and Pension, North Block, New Delhi-110 001
3. Principal Secretary, Home Department, Orissa Secretariat, Bhubaneswar, Dist-Khurda
4. Accountant General of Oriss (A&E), Bhubaneswar, Dist-Khurda

...Respondents

By the Advocates: Mr.U.B.Mohapatra (Res.1)

Mr.R.N.Mishra-2 (Res.2 & 4)

Mr.A.K.Bose (Res.3)

ORDER

MR.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER:

Applicant, a retired Indian Police Service (in short I.P.S.) Officer has filed this Original Application under Section 19 of the Administrative



2 31

Tribunals Act, 1985 praying for the following relief:

- a) ...to quash the order dated 30.4.1997 in so far as it relates to treating the period from 4.4.97 to 31.1.98 as on deputation, declaring the same as illegal, arbitrary, mala fide, without jurisdiction and a production of non-application of mind and issue a direction to the respondents to treat the aforesaid period as on contract.
- b) Declaration be made that action of the respondent 1 and 2 in making the applicant liable for payment of leave salary and pension contributions for the period from 4.4.1997 to 31.1.1998 is illegal, arbitrary, mala fide and without any authority of law.
- c) Deduction made from the withheld gratuity towards leave salary and pension contributions for the period from 4.4.1997 to 31.1.1998 be refunded to the applicant with interest at the prevailing rate.
- d) Respondents 1 and 2 be directed to pay interest on (i) withheld gratuity of Rs.3,50,000/- (Rupees three lakhs fifty thousand only) for the period from 1.2.98 to 31.12.2003 with interest @ 13% per annum.
- e) Respondents 1 and 2 be directed to pay interest for delayed payment of other retirement benefits namely (i) unutilized leave salary of Rs.2,59,000/- (Rupees two lakh fifty nine thousand only), (ii) commuted value of pension amounting to Rs.6,52,144/- (Rupees six lakh fiftytwo thousand one hundred forty four only), (iii) G.P.F. amounting to Rs.5,93,184/- (Rupees five lakhs ninety three thousand one hundred eight four only) for the period from 1.2.1998 to 31.1.2000 @ 13% per annum and (iv) delayed payment of pension for the period 1.2.1998 to 31.1.2000 for the period 1.3.1998 to 30.11.2003 in as much as the payment was made in December, 2003 as per Annexure-5.
- f) Any other order or orders be passed as would deem fit and proper under the facts and circumstances of the case.

2. The facts which have led to filing of the present Original Application are as under:

While the applicant was serving as an I.P.S. officer in Orissa cadre, he was deputed to Government of Mauritius as Security Adviser



from 4.4.1997. The applicant was due for retirement from Government service on 31.1.1998. However, the Central Government had given permission to the applicant to continue in service of the Mauritius Government on contract basis from his retirement and up to 2000. Since the applicant was on deputation from 4.4.1997, he claims that he is entitled for deputation allowance and all other benefits as per the deputation rules in foreign service. On the above grounds, the applicant claims that both the Central and State Governments are bound to give all his compulsory contributions and leave salary during the period of his foreign service. However, the claim of the applicant having been rejected both by the Government of India and the State Government, this application has been filed with the prayers referred to above.

3. To have the above relief, the applicant has taken so many contentions in the Original Application. After hearing the learned counsel for the applicant and the learned counsel appearing for the Respondents, we have to consider whether the applicant is entitled to any relief or not.

4. Learned counsel for the applicant contended that as the applicant was appointed as Security Adviser to Mauritius Government, the Respondents are bound by the terms and conditions contained in Annexure-A/1 appointment order. If both Annexures-A/1 and A/2 are read together, it would mean that the applicant was on deputation and thereby he is entitled for all the benefits applicable to foreign service deputationist. It is further contended that as the Government of India had



permitted the applicant to continue as Security Adviser to Mauritius Government until further orders as per Annexure-A/2 even after his retirement on 31.1.1998, it could be construed that the applicant was on deputation and if so, according to the learned counsel for the applicant, either the Central or the State Government or the Government of Mauritius was duty bound to contribute all his compulsory contributions. The next contention of the learned counsel for the applicant is that as per Rule 16 of All India Services (Death-cum-Retirement Benefits) Rules, 1958, the extended service of the applicant under the foreign Government can be considered only on the basis of extension of service of the applicant in public interest and if so, the applicant is entitled for the benefits available to such extended period of service. This contention was again reiterated by the learned counsel for the applicant on the ground that the Government of India have already issued a letter to the Government of Mauritius to pay to the applicant leave salary and pension contributions as was done in case of other I.P.S. officers, viz., S/Shri R.R.Bhatnagar and P.Sood. However, since the Mauritius Government had not paid the pension contributions, the stand taken by the Government of India that the applicant should pay for the period in question from his own pocket is also not tenable in law.

5. The learned counsel appearing for the applicant mainly relies on Annexures-A/2 and A/3 and claims that the applicant is entitled for the payment of G.P.F. contribution and leave salary by the Government of



5 34

India or by the State Government of Orissa. It is pertinent to note that it is specifically stated in Annexure-A/2 that the applicant "Shri Nandy will remain subject to leave rules applicable to IPS officers and he will pay to the Accountant General, Orissa, Bhubaneswar, leave salary and pension contribution according to the Rules prescribed by the Government of India and as intimated by the A.G., Orissa till his superannuation from the Indian Police Service". It is further stated that "during the period of appointment as Security Adviser, Government of Mauritius, Shri Nandy will continue to subscribe to the Provident Fund to which he was subscribing before his appointment as Security Adviser, Government of Mauritius till his superannuation from the Indian Police Service".

6. The applicant was fully aware of these conditions. Even though it is stated in Annexure-A/2, appointment was until further orders, but that by itself does not make the applicant entitle to claim that he should be considered as to have continued in foreign service on deputation. Hence, the stand taken in Annexure-A/3 by the Government of India that the continuation of the applicant in foreign service would be on contract basis cannot be questioned. If so, the claim of the applicant that both Annexure-A/1 and A/2 should be construed that his appointment for continuation in Mauritius Government is on deputation even after his retirement on superannuation on 31.1.1998 does not hold any water. As per the rules of the Government regarding deputation to foreign service, it is the duty of the officer to see that all the allowances during the period of

08

deputation service are given either by the Government of India or by the country which received his service on deputation. In this context the undisputed fact is that after 31.1.1998 the applicant continued in Mauritius Government on contract basis and if so, it is the lookout of the applicant to find out whether his allowances and leave salaries have been paid by the Mauritius Government. If the Government of Mauritius have not paid such amount, it is the duty of the applicant to pay it to the Accountant General. This is also clear from Annexure-A/4 letter of the Government, in which it is specifically stated that the continuation of the applicant in Mauritius Government is on contract basis. It is also the case of the Respondents that even though the applicant retired on superannuation, he was allowed to continue in Mauritius Government as a serving Member of I.P.S. on certain administrative and security considerations. Apart from that it is the stand of the Respondents that the applicant was allowed to continue in Mauritius Government and his service was extended up to 3.4.2001 on contract basis. That is the reason for which the Government had specifically advised the applicant to pay leave salary and pension contribution according to rules prescribed by the Government of India under the All India Services (Retirement) Rules, as amended from time to time and the matter was already informed to the Accountant General, Orissa, as early as in 1998. While Annexures-A/1 and A/2 were accepted by the applicant, the payment of pension contribution and leave salary by the applicant has not been objected by




him. If so, the contention of the applicant that the Government of India or the State Government of Orissa is bound to pay the leave salary and pension contribution of the applicant after his retirement and during his continuance in foreign service, i.e., from 31.1.1998 onwards is not tenable in law. As the applicant was allowed to continue in service on deputation after his retirement on 31.1.1998, in view of the conditions in Annexure-A/2 the applicant himself is bound to pay the pension contribution to the A.G., Orissa. Further, it has to be noted that as per Rule 8(7) of All India Services((BCRB) Rules, 1958, it is specifically stated that "foreign service rendered by a member of the Service shall count as qualifying services provided that contribution towards the cost of retirement benefits of the Member of the Services, at such rates as the Central Government may prescribe from time to time, have been paid either by the foreign service unless the unless the payment of Government has been received by the Government". Even in the light of the above rule, it is the specific case of the Government of India that the applicant himself has to pay the pension contribution to the A.G., Orissa. So from the above rules also the claim of the applicant that he is entitled for payment of Rs.1,32, 544 is not tenable.

7. With regard to the next contention that the applicant is entitled for payment of interest on the delayed payment of gratuity of Rs.3,50,000/- from the date of his retirement is not tenable, as it is stated in the counter affidavits filed by both the State and the Central Government that as the

applicant having retired on 31.1.1998 was allowed to continue up to 3.4.2001 and the pension papers and other documents were not made available in time by the applicant and that the delay, if any, caused in disbursement of the retiral benefits is actually not attributable to the Respondent-Department at all. In this context, it is also to be noted that no material has been placed before this Tribunal to come to a conclusion that it is only because of default on the part of either the Central or State Government the delay has occurred in disbursement of the retiral benefits to the applicant. Hence, we are of the view that the applicant is also not entitled to any relief on this score.

8. In the light of the discussions made above, we are of the view that the O.A. is liable to be dismissed as devoid of merit. We, accordingly, so ordered. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER