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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 375 of 2008

Cuttack, this the 28th day of March, 2011


Prasanna Kumar Das Applicant

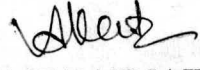
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Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not? Yes


(C. R. MOHAPATRA)
Member (Admn.)


(A.K.PATNAIK)
Member(Judl)

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O.A No. 375 of 2008

Cuttack, this the 28th day of June, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

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THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

Sri Prasanna Kumar Das, aged about 45 years,
S/o.Trilochan Das at present working as Accountant
in the Office of the Accountant General (A&E),
Orissa, Bhubaneswar.

.....Applicant

By legal practitioner: M/s.Chitra Padhi, Monalisa Devi, Counsel

-Versus-

Union of India & Others represented through -

1. Accountant General (A&E), Orissa, Bhubaneswar.
2. Senior Deputy Accountant General (Admn.), O/o the Accountant General (A&E), Orissa, Bhubaneswar.
3. Accounts Officer/Admn.-II, O/o. the Accountant General (A& E), Orissa, Bhubaneswar, Dist. Khurda.
4. Central Provident Fund Commissioner Bhavishya Nidhi Bhawan, 14, Bhikaji Cama Place, New Delhi-110 066.
5. Regional Provident Fund Commissioner-II, Sub Regional Office, Employees' Provident Fund Organization, Howrah, West Bengal.

....Respondents

By legal practitioner: Mr.S.S.Mohanty, Counsel

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ORDERMR. A.K.PATNAIK, MEMBER(JUDICIAL):

The sum and substance of the case of the Applicant is that he joined as a clerk in the office of the Accountant General, Orissa, Bhubaneswar on 15.02.1990 & became a permanent government employee w.e.f. 01.03.1992 & subsequently promoted as Accountant w.e.f. 05.05.1997. While continuing as such, he was selected and appointed as Enforcement Officer in the Office of the Employees Provident Fund Organization at Calcutta w.e.f. 27.7.2000 in pursuance of an advertisement published by the UPSC (Annexure-A/1). However the applicant made a representation to the Central Provident Fund Commissioner i.e. Respondent No.4 expressing his intention to return to his parent department on 23.05.2003 vide annexure - A/3. But he was relieved only on 14.8.2003 vide order under Annexure-A/4. He was allowed to join in the office of the Accountant General, Orissa subject to fulfillment of various conditions including the one that the period between 25.7.2003 and 17.8.2004 shall be treated as 'dies non' and also subject to the condition that he would have to deposit Leave Salary and Pension Contribution at the rate and in the manner provided in Foreign Service Rule for the period from 26.7.2000 to 25.7.2003. He paid a sum of Rs.48,053/- towards Leave

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Salary Contribution & Pension Contribution for the period of service rendered by him in the Employees Provident Fund Organisation with a request under Annexure-A/7 that the said amount may be reimbursed to him in case EPFO remits the amount or being recovered from the said organization in future. He preferred appeal under Annexure-A/8 for treating the period 25.7.2003 to 18.8.2004 as duty for all purposes instead of dies-non followed by another application under Anenxure-A/9 requesting fixation of his pay and release of consequential arrears salary. Alleging no action on his appeal he has approached this Tribunal in the present Original Application under section 19 of the Administrative Tribunals Act, 1985 praying as under:

- “(i) Quash the terms and conditions mentioned in Admn.-1-2P-532 dated 17.8.2004 (Annexure-A/5);
- (ii) Release of the withheld pay and allowances for the period from 26.7.2003 to 16.8.2004;
- (iii) For the refund of the sum of Rs.48,053.00 paid by the applicant towards pension and leave salary contribution;
- (iv) Issuance of direction to the EPF authorities to bear the liabilities of pension and leave salary contribution.”

2. Respondents 1 to 3 contested the case both on merit as also on maintainability. In so far as maintainability of this Original Application is concerned, it is the contention of the Respondents that the Applicant having joined the Department on acceptance of

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the terms and conditions mentioned in Annexure-5 is estopped from challenging the same at a later stage. In so far as merit of the matter is concerned it has been contended by the Respondents 1 to 3 that upon the selection of the Applicant to join in EPF organization, he tendered technical resignation and was accordingly relieved from the office of the AG, Orissa on 26.7.2000. He requested for retention of his lien for two years in his parent organization, in terms of the provisions of the Government of India MHA OM No. 60/37/63-Estt.(A) dated 14.07.1967 . After expiry of the above lien period of two years on 25.7.2002, he again applied for extension of his lien for another year i.e. for the third year in terms of the provision of the OM referred to above and accordingly necessary permission to that effect was accorded with specific intimation either to revert to his parent office or resign from the lien post before expiry of this extended lien period i.e. before 26.7.2003. But neither the applicant was reverted to his parent office (AG, Orissa) nor tendered his formal resignation from the parent organisation. However he was relieved from EPF Organization only on 14.08.2003 vide Annexure-A/4 and submitted his joining report in his former organization on 18.8.2003 i.e. after expiry of the extended period of retention of lien. There is no provision for acceptance of joining report of an

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employee coming back to join in his former department, after the lien period is over. Hence his joining report could not be accepted. However, the relieve of the applicant after the expiry of the lien period was taken up with the EPF by the AG Orissa and the EPF organization intimated that the delay ~~was~~ occurred due to compliance of technical formalities. On receipt of the reply of the EPF, the competent authority of the AG Orissa took a sympathetic view of the matter and intimated the applicant that his joining report would be accepted subject to the conditions as stated in Annexure-A/5. On the basis of the unconditional undertaking furnished by him in Annexure-R/3 he was allowed to rejoin his post on 19.8.2004 FN i.e. 1 year and 25 days after being relieved from his previous employer (EPF Organization). The Respondents further contended that the applicant was allowed to rejoin his duties on 19.8.2004 treating the period of absence from 26.7.2003 to 18.8.2004 (but not 16.8.2004) as dies non by invoking the provisions of FR 17 (1) and that as the applicant had not rendered any work during the aforesaid period as per the principle of 'no work no pay' he was not entitled to claim any pay and allowances for these period. Accordingly, Respondents have prayed that this OA being devoid of any merit is liable to be dismissed in *limine*.

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3. In addition to the above, the Respondents 4 & 5 in their counter have stated that as the applicant has approached this Tribunal without exhausting departmental remedies and suppressing some of the material facts for which this OA is liable to be dismissed. Further contention of the Respondents 4 and 5 is that the applicant tendered his resignation on 14.7.2003 which was accepted by the competent authority vide order No. T-189 dated 12.08.2003. He was accordingly relieved from his duty w.e.f. 14.8.2003 AN. Hence the question of bearing liabilities regarding leave salary contribution and pension contribution does not arise as the applicant tendered his unconditional resignation as per his letter dated 14.7.2003 which was accepted by the competent authority.

4. Despite grant of adequate time after receipt of the counters no rejoinder has been filed by the Applicant.

5. Ms. Chitra Padhi, learned counsel appearing for the applicant strenuously argued that the provision of FR 17 (1) has no application to the instant case as it provides that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence. But here in the case in hand, though the applicant reported for duty at the earliest opportunity i.e. soon after his relieve from the EPF

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organization, his joining report was not accepted by the AG Office on the ground of expiry of the lien period. Learned counsel for the applicant Ms. Padhi brought to our notice the decision of the Hon'ble Apex Court in the case of **(Union of India v K.V.Jankiraman, reported in AIR 1991 SC 2010)** to fortify her stand that no work no pay principle is applicable only where the absence was intentional and deliberate but certainly not like on the present situation. Further contention of the Applicant's counsel is that as the absence of the applicant was not an unauthorized one, the decision not to take into consideration such period for granting the benefit of LTC, Pension etc is not maintainable and that the order under Annexure-A/6 directing the applicant to pay Rs.48,053/- towards leave salary and pension contribution for the period from 27.7.2000 to 25.7.2003 is bad in law being contrary to the provisions of FR 115. Next contention of the Applicant's counsel is that there is no indication in the order dated 17.8.2004 under annexure A/5 that the EPF organization refused to bear the leave salary and pension contribution in respect of the period of service rendered by the applicant under the said organization from 26.7.2000 to 14.8.2003. On the contrary in terms of the conditions mentioned in the advertisement (Annexure-A/1), the EPF organization is liable to bear the pension and leave salary



contribution for two years after the appointment or till the permanent absorption & hence directing the applicant to pay Rs.48,053/- towards pension/leave salary contribution is erroneous. Accordingly, Learned Consul for the Applicant prayed for grant of the relief as claimed in this OA. Per contra, by relying on the stand taken in their respective pleadings, Learned Senior Counsel appearing for the AG Orissa and Learned Counsel appearing for the EPF Organization have vehemently opposed the arguments advanced by Applicant's counsel and have reiterated that this OA being devoid of any merit is liable to be dismissed in limine.

6. Heard the rival submissions of the parties and perused the materials on record vis-à-vis the provisions of the Rules relied upon by the parties and the ruling of the Hon'ble Apex Court on which reliance was placed by Applicant's counsel. Before proceeding to deal with the matter, we feel it necessary to extract the relevant portion of FR 17 (1) and 115. It reads as under:

"FR 17 (1). Subject to any exceptions specifically made in these rules and to the provision of sub rule (2) an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post and shall cease to draw them as soon as he ceases to discharge those duties;

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Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence;

(2) The date from which a person recruited overseas shall commence to draw pay on first appointment shall be determined by the general or special orders of the authority by whom he is appointed."

"FR115(a) While a Government servant is in foreign service, contribution towards the cost of his pension must be paid to general revenues on his behalf;

(b) If the foreign service is in India, contributions must be paid on account of the cost of leave salary also.

(c) Contributions due under Clauses (a) and (b) above shall be paid by the Government servant himself, unless the foreign employer consents to pay them. They shall not be payable during leave taken while in foreign service.

(d) By special arrangement made under 123(b), contributions on account of leave salary may be required in the case of foreign service out of India also, the contributions being paid by the foreign employer.
NOTE 1. Pensions, throughout this Chapter, include Government contribution, if any, payable to a Government servant's credit in a Provident Fund."

7. It is not disputed that the Applicant represented the EPF authority vide Annexure-A/3 dated 23.5.2003 intending to return to his parent department from 01.07.2003 which falls well within the extended period of three years. Copy of this representation in Annexure-/3 was also submitted by the applicant to the AG Orissa for information which has not been disputed in the counter affidavit filed by the Respondents. In the said application while the applicant requesting to return him to his

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parent department on 1.7.2003 has also requested for arrangement of payment for pension contribution as required under the rules from 27.7.2000 to 30.6.2003. Thereafter vide order under Annexure-A/4 dated 14.8.2003, the applicant was relieved by the EPF organization w.e.f. 14.8.2003 and joined in the AG Orissa on 18.8.2003. But according to the Respondents 1 to 3 the joining report of the applicant was accepted after getting the clarification from the Respondent 4&5 only on 19.8.2004 FN (i.e. after one year and 25 days). But we find no contributory negligence on the part of the Applicant for such delay in relieving him from EPF organization and acceptance of his joining report by the AG Orissa at a belated stage and therefore for such delay the applicant cannot be held responsible. We are in agreement with Ms. Padhi that the ruling of the Hon'ble Apex Court in the case of Union of India v K.V.Jankiraman, reported in AIR 1991 SC 2010 is applicable in the case at hand where Their Lordships have decided the issue by stating therein that

"The normal rule of 'no work no pay' is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases."

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Similarly the undertaking furnished by the Applicant under Annexure-R/3 can have hardly any help to the Respondents as it is well settled law that undertaking furnished in panic situation, as in the instant case, cannot create estoppel to remedy the right. In this connection, we feel it appropriate to cite the ruling of the Hon'ble Apex Court in case of **(Central Inland Water Transport Corpn. v. Brojo Nath Ganguly, reported in (1986) 3 SCC 156)**, where their Lordships at page 216 has stated that

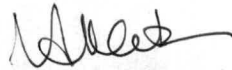
"The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be."

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8. For the reasons stated above as well as the well settled position of law as discussed above, invocation of the provision of FR 17 (1) is held to be unwarranted on the part of the Respondents and therefore as per the conditions stipulated in the advertisement and Rules, the EPF organization is liable to remit the pension contributory amount for the period from 27.7.2000 to 30.6.2003 which they shall do, if not already done, within a period of 45 days from the date of receipt of copy of this order and from the date of relieve till the date of joining in Accountant General, Orissa the period of the applicant from 25.07.2003 to 18.08.2004 would be treated as duty for all purposes but the applicant shall not be entitled to any back wages, he having spent the aforesaid period without any duty and no document has been produced to show that he was not in any employment during the aforesaid period. Accordingly, the Respondents (Accountant General, Orissa) are hereby directed to refund the applicant amount already deposited by the applicant forthwith.

9. In the result, with the aforesaid observation and direction this OA stands allowed. There shall be no order as to costs.


(C. R. MOHAPATRA)
Member (Admn.)


(A.K. PATNAIK)
Member (Judl)