

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 514
T. A. No.

1990

DATE OF DECISION 14.8.91

T. M. Varghese Applicant (s)

Mr. P. Santhalingam Advocate for the Applicant (s)

Versus

Chairman, Railway Board, ~~and~~ Respondent (s)
New Delhi and others

Mr. M C Cherian Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

A Railway Employee who sought voluntary retirement seeks pensionary benefits from the Respondents by filing this application under section 19 of the Administrative Tribunals Act. The applicant joined North East Frontier Railway as a Pharmacist on 16.12.1958. While he was working at Hubli his name was included by Central Government in the Foreign Assignment Panel of Pharmacists. He was sent to Libya on deputation. The sanction order Annexure A-II contains the terms and conditions. The relevant clauses are extracted below:

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" The secondment will commence from the date Sri T. M. Varghese relinquish charge of his post on the Railways and will terminate on the date he re-joins.

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Foreign Service Contributions

Sri T. M. Varghese shall arrange to pay his own subscription to SRPF AS ALSO PF Pension/contribution on the basis of his railway pay during the period of his foreign service. No leave salary contribution shall, however, be made as this period will be treated as Dies-Non for leave..."

2. He worked in Libya w.e.f. 15.5.1973 to 24.4.1979

Though at the time of deputation the applicant was told that the amount of foreign service contribution to be paid by him will be intimated by the respondents he has not received any communication informing the exact amount of foreign service contribution to be remitted by him. Therefore, he sent repeated letters from 12.1.1974 (the first letter is Annexure A-4) for getting information about the quantum of the amount so that he may remit the same by cheque. After his assignment in Libya he could not leave station because he was in charge of stores, as Store-Keeper-in-Charge, of medical stores department of the Govt. of Libya. He was making attempt for the release from Libya and extension of his foreign deputation by the Government of India through the Indian Embassy. He got information vide Annexure A-13 letter dated 18.12.1978, a letter sent by the Embassy of India to the applicant, stating that the Railway Ministry has informed the Embassy that the permissible period on deputation of 5 years granted

to the applicant is already over and that he should report to India without any further delay. Accordingly, he got permission of the foreign employer and the applicant was permitted to leave Libya after relinquishing his duty w.e.f. 24.4.1979. Annexure A-14 is the sanction order. The applicant as per his letter dated 9.5.79 Annexure-A~~VI~~ addressed to the Divisional Supdt. South Central Railway requested to permit him to proceed on voluntary retirement w.e.f. 9.5.1979. The applicant was informed by the Divisional Supdt. by Annexure A-8 letter that he should pay a sum of Rs. 2190/- in lieu of three months notice for voluntary retirement. This was paid by him as per cheque dated 11.5.89 referred to in Annexure A-IX.

3. The applicant sought voluntary retirement as provided under FR 56-K since he has completed statutory minimum period. This was clear from Annexure A-XV representation dated 9.9.80 sent by the applicant to the Divisional Railway Manager, Hubli. Annexure A-16 communication from ~~give by~~ the Railway Manager does not detail either the acceptance of his proposal for retirement or about the extension of deputation. Hence, he again filed representations offering his willingness to pay the exact amount due from him towards foreign service contribution provided he is informed about the quantum. Ultimately he received Annexure A~~XVII~~ letter dated 2.11.88 from the Divisional Railway Manager, Hubli intimating him to

remit the foreign service contribution extending to Rs. 13,277.60 (Indian currency) with interest. Since the payment was directed in xxxx appropriate foreign currency (xxxxxxxxxxxxxx) including the interest, the applicant informed the Divisional Railway Manager by Annexure A-XVIII reply that he is prepared to pay the exact amount for foreign service contribution provided the interest for delayed payment is deducted from the amount because the delay was not occasioned by any default on the part of the applicant. The applicant received Annexure A-19 communication from the Ministry of Railways intimating that the applicant's request for voluntary retirement can be considered only if he has rendered twenty years of service/that ^h and since there is over stayal, the period of applicant's duty on deputation can be regularised after getting clarification from the Ministry of External Affairs. Further representations were also sent by the applicant. Ultimately he received Annexure-XX proceedings in February, 1989 rejecting the request for voluntary retirement on the ground that the applicant has only 16 years of service and that the question of relaxation of his over stayal at Libya beyond the permissible period of 15 years cannot be computed for granting pensionary benefits. Under these circumstances, the applicant filed this Application ^{and h} challenging Annexures-XVII and XX orders/for a declaration that the service of the applicant in Libya has to be

treated as qualifying service for reckoning the total period of service of the applicant in order to grant the pensionary benefits.

4. The respondents filed detailed counter affidavit denying the various allegations and averments made in the application. But they have admitted that there is a series of correspondence between the applicant and the Railways regarding the question of deduction of foreign service contributions and regularisation of his service. But it is not possible to verify the same with regards to the documents produced by the applicant because of the destruction of the entire records on fire accident occurred in Hubli Division office in 1981. However, the applicant has not paid the amount payable by him towards foreign service contribution either in foreign currency or in Indian currency in spite of Annexure XVII letter dated 2.11.1988 which was a general order passed in favour of the applicant taking a very lenient view of the matter even by condoning his lapses in making the timely payment in foreign currency. By letter at Annexure A-VIII dated 9.5.1979 the applicant wanted permission to remit three months salary purporting to be in lieu of notice pay. Hence the said notice pay was fixed at Rs. 2190 and it was received. This cannot be treated as an acceptance by the Department of the

request made by the applicant for voluntary retirement.

Right of voluntary retirement with pensionary benefits on completion of twenty years of service is a special right conferred on the railway servants and this cannot be granted to the applicant since he is a defaulter and the application is liable to be dismissed.

5. ^{learned} We have heard arguments of the counsel on both sides. The applicant's claim that he was not given timely intimation for making the payment of foreign service contribution is amply supported by the correspondence and the documents produced in this case. Everxx, since the applicant joined foreign service in Libya he was sending repeated letters/representations to the Railway authorities for fixing the quantum to be paid by him in this behalf. For the first time the amount was fixed by the Railway on 2.11.1988 as seen from Annexure A-XVII. This letter reads as follows:

"Your case was referred to Railway Board for consideration. Railway Board desires to know whether you are willing to remit foreign service contribution for entire duration of your stay on secondment at Libya, in appropriate foreign currency. The approximate amount to be credited by you including interest for delayed contribution upto 31.10.1988 works out to Rs. 13,277.60 (Indian currency). The amount mentioned includes foreign service contribution upto 18.12.1978 and interest upto 31.10.88 only. Further interest beyond 31.10.88, till date of actual remittance, has to be added at the time of actual remittance.

Please advise by return whether you are in a position to pay the said amount in foreign currency to consider your case for treating the entire period of stay at Libya, as on deputation by Railway Board."

5. The default, if any, on the facts and circumstances of this case, on the part of the applicant is to be attributed, it can only from the date of receipt of Annexure A-XVII because till then the applicant was never informed of the amount to be paid by him. It is seen from further proceedings that the applicant was willing to pay the amount provided the interest portion is deducted from the amount shown in Annexure XVII. But the said request of the applicant has not been considered and disposed of till the filing of this case. Under these circumstances, the default is on the part of the Railways because the applicant was repeatedly writing to the Railways for correct quantum of the amount to be paid by him; but the Railways did not take a final decision disposing of the representations after giving an opportunity of being heard to the applicant. Hence, under these circumstances, the applicant cannot be treated a defaulter in this behalf.

6. The applicant's request for voluntary retirement by his letter dated 9.5.1979 (Annexure-VII) appears to have been considered when the Railway has passed Annexure VIII letter intimating him to pay Rs. 2190 in lieu of three months' notice pay. In his application he

has specifically stated that he has completed 20 years of service on 16.12.78 and he wishes to go on voluntary retirement from service w.e.f. 9.5.1979. It is after advertizing to all these aspects and the request that the Railway has permitted the applicant to pay the said amount and accepted the same by cheque. So it is to be presumed that the Railways have no objection at the time of granting permission to the applicant to proceed on retirement at his request particularly when no disciplinary proceedings are pending or initiated against the applicant for the alleged over stayal by the applicant in Libya. The applicant has given a convincing explanation for his over-stayal beyond the permissible period in Libya. He submitted that since he was in charge of the stores he was unable to leave the station without getting permission from the Employer in the country in which he was working particularly when he was in charge of stores of chemicals.

7. In the counter affidavit the respondents have stated that Annexure XVII is a concessional order passed after taking a lenient view of the matter "even by condoning his lapses in making timely payment in foreign currency." Since the respondents have condoned the lapses, it is fair

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and proper to grant the applicant the pensionary benefits due to him after accepting the amount already fixed, a sum of Rs. 13,277.60 being the foreign service contribution due from the applicant.

8. In the course of the arguments, the learned counsel Shri P. Santhalingam, appearing for the applicant fairly submitted that his client is prepared to remit the aforesaid amount provided the interest portion is deducted from it.

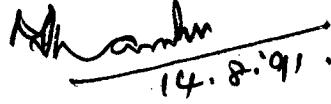
9. Having heard the arguments, we are of the view that the applicant cannot riggle out of the liability of payment of Rs. 13,277.60 being the foreign service contribution already fixed by the Railway in this case even though it include a part of interest. But having regard to the facts and circumstances of the case we are of the view that the applicant cannot be made responsible for any further interest on this amount. Accordingly, we feel that justice will be met in this case if we dispose of the application with directions.

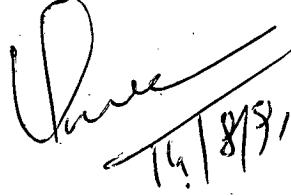
10. In the result, we direct the applicant to make the payment of Rs. 13,277.60 in Indian currency within a period of one month from the date of receipt of the judgment.

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If the applicant makes the payment as directed above, the respondents are directed to count his entire foreign service in Libya as qualifying service for purpose of pension and determine the pensionary benefits due to him in accordance with law and pay him his dues. This shall be done within a period of three months from the date of receipt of the amount of Rs. 13,277.60 towards his foreign service contribution, if the applicant makes the payment as directed above.

11. The application is accordingly disposed of as above. There will be no order as to costs.


14.8.91
(N. DHARMADAN)
JUDICIAL MEMBER


14.8.91
(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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