IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 616 1990
T. A. No.

DATE OF DECISION 30-9-91

T. C. Benny Applicant (s)

Mr. P Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India represented by General Manager, Integral Coach Factory, Madras and another Respondent (s)

Smt. Sumathi Dandapani 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The question which arises for consideration is as to whether a Railway employee who has executed a service agreement is bound to pay the amount spent by the Railway for his training when the quantum of liability is unilateraly fixed by them without any notice, on his refusal to serve the Railway for the period of five years after completion of the training.

2. The applicant is a graduate in Chemical and Metallurgical Engineering. He was appointed after selection by Annexure A-2 order as Chemical & Metallurgical Assistant (CMA for short) Trainee on a monthly stipend of Rs. 1400/- He was posted as per Annexure A-3 order dated 29.3.1989 in

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the Lab. Shell vice Sri G. Sivakumar. Later from 10.5.1989 he was posted in Sr. CMT's office by Annexure A-4 order. Thereafter, by an internal order Annexure A-5 he was transferred from NDT Lab. to Forge Shop. In the Forge Lab. he was posted against an existing vacancy and he xxx discharged the full duties and responsibilities of a CMA independently. While so, the applicant submitted Annexure A-6 letter dated 4.5.1990 seeking permission to resign from the post of CMA w.e.f 10.6.90. He also requested that the period of notice may be treated as leave eligible and the resignation may be accepted. This was answered by Annexure A-7 letter informing him that as per the terms and conditions of service agreement executed by him, he is required to serve the Administration for a period of five years after completion of his apprenticeship failing which he will be compelled to refund the cost of training which will be at the rate of 12½% of stipend of pay and allowances if any drawn by him. To this he replied stating that his service was utilised as a CMA against a working post as regular employee and since no training was imparted incurring expenditure, the applicant is not liable for any amount. Since no reply was given to Annexure A-9, the applicant has filed this application with the following prayers:

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a) to call for the records leading to Annexure A-7 and A-8 and quash them

b) To declare that the applicant is not liable to pay any cost of training to the respondents since there was no factual training to the applicant.

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c) to direct the respondents to accept the resignation of the applicant."

3. The respondents have filed counter affidavit and produced the office order, by which the applicant was selected and appointed, as Annexure R-1 and the details of his training Annexure R-2 and the service agreement executed by him, Annexure A-3 and contended that since the applicant has undergone the training on the basis of the service agreement and the bond executed by him, his resignation cannot be accepted without discharging his contractual obligation governed by the service agreement.

4. Annexure A-1 offer of appointment itself contains the provision for executing a fidelity bond binding himself and one sureity in the event of failure to satisfy the conditions stipulated therein. The period of training will be for one year with a monthly stipend of Rs. 1400/- in the scale of 1400-2300 plus D.A. admissiblle under the rules. There is a further clause which stipulates that a trained employee is bound to serve for a period of five years if he is selected and appointed against working post after a training. The clause in the agreement Ext. R-3 default reads as follows:

> " And whereas one of the terms and conditions to the said engagement of the trainee is that the trainee shall complete the prescribed training and after such completion, shall accept service under the Government and serve the Government for a minimum period of five years and if the trainee deserts service or resigns from service during the period of training or thereafter without the written

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consent of the Government or is discharged therefrom misconduct or any other offences as enumerated in the deed, the trainee shall repay on demand by the Government the whole cost of training and pay any other amount, excluding travelling and running allowances drawn by the trainee from the Government under those terms and conditions."

5. The appointment order also specifies the period of training and the aforesaid clause. It is after accepting all these conditions that the applicant has undergone training and worked in the Railway. He has not raised the question at any time before submission of Annexure A-6 request for permission to resign that he was neither posted for training nor any amount was spent by the Railway in this behalf. On the other hand, admittedly he has received the stipend and the emoluments provided under the orders during the period of training. So his liability under the service agreements cannot be disputed and it has not been challenged before us.

6. The only contention raised by the learned counsel for the applicant is that the Railway had not spent any money for training in any of the offices. According to him, actually there was no training programme for him. He tried to substantiate his contention, that the applicant was given independent charges ever since his absorption after Annexure-II appointment order by referring to some documents produced by him. He was endeavouring to show

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that the applicant was independently working. Therefore, there is no liability to pay the amount shown in Annexure A-8 letter. This contention cannot be accepted so long as the service agreements and the bond are in force. The applicant's liability is contractual based on the service agreement and indemnity bond containing clear terms and conditions. The violation of the terms and conditions makes him liable for the amount spent by the Railway for his training programme.

7. Admittedly the applicant was appointed as a trainee and the training was stipulated as a condition precedent for the regular appointment. Annexure A-1 intimation given after selection and Annexure A-2 offer of appointment clearly establish the various conditions pertaining to the training. Annexure A-3 appointment and Annexure A-4 posting order disclose that he was appointed and posted as a trainee CMA. In the light of these documents it can only be presumed that the applicant was appointed as Trainee and there was training. The applicants letter seeking permission to resign from the Railway service before serving the Railway for a minimum period of five years is definitely a breach of contractual obligation and hence is liable for the cost if any, incurred by the Railway on account of

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his selection and appointment to the post which provides a training before regular appointment. Under these circumstances the liability of the applicant based on breach of the service agreement executed by him cannot be faulted.

8. But the liability for cost, if any, sustained by the Railway due to the default and breach of service contract/ agreement should be fixed in accordance with any legally recoginised or permissible method. Otherwise, the amount is not due to be realised in a summary manner by merely issuing a demand or notice to the Government servant.

9. In the instant case the applicant's liability has been fixed at Rs. 30,386/- But there is no data as to how this figure was arrived at by the Railway. This figure has been fixed or arrived at by the Railway without giving any prior notice or hearing to the applicant. It may be 12½% of the pay and allowance as per the agreement but the amount was fixed unilaterally by the Railways. The applicant is disputing the quantum and also his very liability for the same raising the ground that the Railway had not incurred any 'cost' at all because according to the applicant no training was given to him. When the very basis of the liability itself is in dispute it is obligatory on the part of the Railways to give notice to the applicant

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and appraise him the basis and the break up of the figures and the data with which the Railway had fixed the 'cost'due from the applicant based on the terms and conditions in the service agreement. The Railways cannot arrogate themselves to be an arbitrator for fixing the amount of 'cost' and other expenses incurred by them in this connection. The 'cost' to be recovered must be an amount due. An amount is due for realisation only when it is legally fixed either through a Civil Court or by an Arbitrator provided in the agreement or by a competent administrative authority under the agreement after giving due notice to the person who is sought to be made liable.

10. In the instant case Ext. R-4 is the agreement. It does not contain any clause conferring right on the Railway or any officer thereto to fix the quantum or cost to be recovered from the applicant in case of any default committed by him. But clause 15 is relevant. It is extracted below:

> "Should the Apprentice terminate his apprenticeship without the written consent of the Government or try to withdraw by wilfully absenting himself or by adopting any other unfair tactics or discharged therefrom for the period of apprenticeship or decline on the completion of his apprenticeship to accept service as C & M Assistant in the INTEGRAL COACH FACTORY or INDIAN RAILWAYS as aforesaid (if offered to him), or resign before completion of five years service after apprenticeship without the written consent of the Government, or fail to carryout his duties with due deligence before the completion of the said 5 years service

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> the parties of the first part and/ or the second part in consideration of the promises, hereby jointly and severally agree to repay on demand to the Government all stipends or pay or any other amount drawn by the Apprentice from the Government under these presents and also to refund to the Administration on demand, the whole cost of his training which will be understood as 12½% of stipend or pay and allowances excluding travelling and running allowances, if any, drawn by the apprentice."

A reading of the clause gives the impression that the trainee is liable, in case of default all stipends pay or other amounts drawn by him and the cost of training being 12½% of the stipend or pay and allowances excluding the travelling and running allowances. But who is to fix the liability and in what manner? This clause does not provide for procedure regarding fixation of the quantum of the 'cost' or the amount when the Railway servant fails to discharge his obligation and commits a breach of the above clause. In the indemnity Bond Ext. R-3 executed on the same day by the applicant with a surety, there is an arbitration clause which is not part of the agreement. Considering the wordings of that clause it is doubtful whether it can be resorted to by the parties when there is dispute regarding the 'training' and Railway's 'cost' even if it is treated as part of the agreement as contended by the learned counsel for the respondents. However, having regard to the facts and circumstances of this case andafter a careful consideration of the issue, we are of the view that the arbitration clause

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in Ext. R-3 is not helpful for the respondents to nonsuit the applicant by driving him to arbitration.

11. As indicated above the respondents have not given the break up figures or even indicated as to how they have arrived at Rs. 30,386/- and fixed the amount due from the applicant on account of his default. Admittedly it was not fixed with notice to the applicant regarding quantum and method of fixation. This is illegal. The Supreme Court in Union of India V. Raman Iron Foundry, AIR 1974 SC 1265 considered the question of liability in a breach of contract andheld as follows:

> "Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decreee or order by a court or other adjucidated authority. When there is a breach of contract, the party who commits the breach does not 'eo instianti' incur any pecuniary obligation nor does the party complaints of the breach becomes entitled to a debtdue from the other party."
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> " A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable..."

In M/s. Devi Das Vs. State of Punjab, AIR 1967 SC 1985 Subba Rao Chief Justice said:-

> "A liability to pay income tax is a press liability though it becomes payable after it is quantified in accordance with ascertainable data."

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The Kerala High Court in a case of contractual liability in a matter of similar circumstances in Chellappan Vs. Executive Engineer, 1979 KLT 53 followed the Supreme Court decisions and held as follows:

> "In this context I may refer to the decision of the Supreme Court in Union of India V. Raman Iron Foundry, AIR 1974 SC 1265. Bhagwati J. speaking for the Bench said in that case at page 1273 thus:
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> > "Now the law is well settled that a claim for unliquidated damages does not give rise to a debt until the liability is adjudicated and damages assessed by a decree or order of a court or other adjudicatory authority. Where there is a breach of contract, the party who commits the breach does not eo instanti incur any pecuniary obligation, nor does the party complaining of the breach becomes entitled to a debt due from the other party. The only right which the party aggrieved by the breach of the contract has is the right to sue for damages. That is not an actionable claim and this position is made amply clear by the amendments in S.6(1) of the Transfer of Property Act, which provides that a mere right to sue for damages cannot be transferred."
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> I may also refer to a passage from the decision of the Bombay High Court in Iron and Harware (India)Co v. Firm Shamlal and Bros. AIR 1954 Bom 423, a passage to which reference is made in the above decision. That reads thus:
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> > "As already stated, the only right which he has is the right to go to a Court of Law and recover damages. Now, damages are the compensation which a court of law gives to a party for the injury which he has sustained. But, and this is most important to note, he does not get damages or compensation by reason of any existing obligation on the part of the person who has committed the breach. He gets compensation as a result of the fiat of the Court. Therefore, no pecuniary liability arises till the Court has determined that the party complaining of the breach is entitled to damages. Therefore, when damages are assessed, it would not be true to say that what the Court is doing is ascertaining a pecuniary liability which already existed. The Court in the first place must decide that the defendant is liable and then it proceeds to assess what that liability is. But till that determination there is no liability at all upon the defendant."
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> The Supreme Court concluded by saying:
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> > "A claim for damages for breach of contract is, therefore, not a claim for a sum presently due and payable and the purchaser is not entitled,

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> in exercise of the right conferred upon it under clause 18, to recover the amount of such claim by appropriating other sums due to the contractor."

In Mundavalappil Kunhikannan v. The State of Kerala and others, AIR 1974 Kerala 21 (V 61 C 7), the Kerala High Court held:

> "It is not as if the law would permit an arbitrary demand being made against a person merely because he has committed a default in comlying with the terms of the sale notification. His liability will have to be quantified in a fir and just manner and where the department itself had undertaken the responsibility of managing the shops. the necessity for such a quantification would become all the more grave. In the present case, it is not disputed that the petitione the petitioner has not been informed about the manner in which and the data based on which the quantification of his liability has been effected. Nor has he been afforded any opportunity of making his representation concerning the said matter. Rules of natural justice and elementary fairness require that before making any final demand on the peititoner for making good the loss sustained by the department, he should be informed of the data on which the demand is based and should also be given an opportunity to state his case."

11. Having considered the matter in detail in the light of the settled legal proposition, I am of the view that the amount fixed by the Railway as per the Annexure A-8 order is without notice and it cannot be upheld. The applicant was never associated with the process of fixing the quantum at any time. Annexure A-7 is the first notice in this behalf. It does not indicate the basis and the principle by which the fixation of the cost of training so as to enable applicant to give his views about the same. This letter is followed by Annexure A-8 fixing the cost of the Railway

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as Rs. 30,386.60. At no time the applicant was put on notice of the nature of breach and the consequence thereof particularly the details of the 'cost' with all necessary data regarding the method of fixing the 'cost' incurred by the Railway to be realised from the applicant. Since no notice had been given to the applicant regarding the fixation of the 'cost' incurred by the Railway, I am of the view that Annexure A-8 is liable to be quashed to the extent of fixation of the quantum of liability of the applicant. It can only be fixed after giving notice to the applicant and hearing him.

12. Accordingly, I set aside Annexure A-8 to the extent of fixation of quantum of liability of the applicant and sent back the matter to the second respondent for fixing the actual liability of the applicant after hearing him in accordance with law taking into consideration the above observation.

30.12.91

(N. DHARMADAN)
JUDICIAL MEMBER

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N.V.Krishnan, Administrative Member

14. I have perused the judgement of my learned Brother. While I generally agree with the conclusion in para 12, I am unable to subscribe to the views expressed by him that the Exbt. R4 agreement does not contain any clause conferring any right on the Railway or on any officer thereof to fix the quantum or the cost to be recovered from the applicant in case of any default committed by him, that before fixation of such liability, a notice is required to be given to the applicant regarding the quantum and method of fixation and that otherwise, the fixation of liability is illegal. As the matter relates to the interpretation of a standard form of agreement executed by apprentices, the matter becomes important and hence the need for these observations.

15. I am of the view that clause 15 of the agreement, as reproduced in para 10 of my learned Brother's judgement, makes it clear that when an apprentice defaults in the manner described in that clause, the Government can demand "all stipends or pay or any other amount drawn by the apprentice from the Government under these presents and also to refund to the Administration on demand, the whole cost of his training which will be understood as 12½% of stipend or pay and allowances excluding travelling and running allowances." This provision is precise and unambiguous as to what can be demanded. What is required is only a computation which is a simple exercise in arithmatic based on the records of the Respondents. The amounts of stipend and the amounts of allowances, other than travelling and running allowances, will be known to the Respondents from their records. 12½% of the stipend is declared to be the

cost of his training which is an additional amount due for recovery. Thus the total due for recovery can easily be computed.

16. In this situation, the decisions relied upon by my learned Brother do not appear to have application to the facts of this case. They apply when one cannot discern from the agreement itself what is the amount actually due to be recovered.

17. Nevertheless, the Annexure-8 demand needs to be quashed because the respondents have not made available to the applicant the computation on the basis of which they have arrived at the figure of Rs 30,386/- for recovery as stated therein. In the absence of such information the applicant is not in a position to satisfy himself that this amount is really due to the respondents in terms of clause 15. It is only for this reason that I feel that Annexure-8 becomes liable to be quashed.

18. In the circumstances, I agree with the directions given in para 12. In order to enable the applicant to be satisfied on this score, the respondents may communicate to him the details of whatever is due to be recovered from him in terms of clause 15 of the agreement and leave it to the applicant, to contest the calculations, if so advised, within a reasonable time. If he does so, the respondent shall consider his representation and pass appropriate orders, determining the final amount to be recovered.

30.9.91

(N.V.Krishnan)
Administrative Member

19. Since there is agreement in the final conclusion we set aside Annexure A-8 order to the extent of fixation of quantum of liability of the applicant and sent back the matter to the second respondent for fixing the actual liability of the applicant after communicating to him the details of the amounts proposed to be recovered from him.

20. The application is allowed to the extent indicated above. There will be no order as to costs.

30.12.'91

(N. DHARMADAN)
JUDICIAL MEMBER

30.9.91

(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

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