

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O.A.No.318/97

Tuesday , 30th day of September, 1997.

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI S.K.GHOSAL, ADMINISTRATIVE MEMBER

Arun H.,
Scientist /Engineer 'SD', Staff Code No.20433,
Flight Computer Division,
Computers and Digital Systems Group,
Avionics Entity,
Vikram Sarabhai Space Centre,
Thiruvananthapuram-695022. ..Applicant

(By Advocate Mr.Ajith Prakash)

vs.

The Director,
Vikram Sarabhai Space Centre,
Thiruvananthapuram -695022. ..Respondent

(By Advocate Mr.C.N.Radhakrishnan)

The Application having been heard on 11.9.97, the Tribunal on
30.9.1997 delivered the following:

O R D E R

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

When the applicant was functioning as Scientist/Engineer, Flight Computer Division(Computers and Digital Systems Group, Avionics Entity) of Vikram Sarabhai Space Centre, he was sponsored for M.E. Degree course under the educational programme of the ISRO-II SC Space Technology Cell at the Indian Institute of Science, Bangalore for a period of 18 months commencing from July 30,1993. The applicant was required to execute a bond before proceeding to Bangalore, with two sureties , agreeing to serve the VSSC for a minimum period of 5 years after completing the course and it was

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stipulated that if he failed to do so, the expenditure incurred on him would be recovered from him, together with interest. The applicant along with two sureties executed the bond and proceeded to Bangalore to join the course. After completing the course successfully, the applicant reported for duty in VSSC on 10.2.1995. Finding that the qualification acquired by him would be better utilised if he was transferred to Software Quality Assurance Division, he made a request for such transfer. As the request was not acceded to, the applicant decided to resign from service and therefore, he submitted his letter of resignation on 7th October, 1996 (Annexure A7). On receipt of the letter of resignation, the Administrative Officer of the respondent issued an order dated 8th November, 1996 (Annexure-A8), calling upon him to refund a sum of Rs.1,68,165.00 being pay and allowances, TA/DA, Course Fee and interest thereon at 8.5% per annum, in accordance with the terms of the bond executed by him. The applicant, on receipt of the above communication, wrote to the respondents, stating that according to the terms of the bond, for his failure to serve a period of 5 years, he was required to pay an amount of Rs.94,000/- only and that he was entitled to proportionate deduction for his service of 1 year and 9 months rendered after successful completion of the course and requesting that he may be relieved of his duties, accepting the amount actually due. As the applicant wanted to quit the service at the earliest, on 6th December, 1996, he wrote a letter to the respondent in which he undertook to clear all the liabilities with the Centre, as may be determined in future. In reply to

this, the respondent informed the applicant that he had to pay a sum of Rs. 1,31,035.00 and that he might have to pay interest on the amount of Rs.1,31,035.00, details of which would be intimated separately. However, as the applicant was desirous to get early relief, he paid Rs.1,33,534/-. The applicant wrote a letter on 23.12.1996 requesting that he might be relieved with effect from 24.12.1996. The respondent went on making demand for payment of Rs.40,000/- by way of interest. Ultimately, the applicant was relieved of his duties with effect from 1.1.1997 accepting his resignation. As the applicant considered that his liability was restricted to payment of Rs.94,000/- reduced by the proportionate sum for his service for 1 year and 10 months he has filed this application praying for setting aside the orders at Annexures A8, A11 and A17 and for a direction to the respondent to refund the amount received from the applicant in excess of Rs.94,000/- as also to refund to him the amount proportionate for his service for 1 year and 10 months out of Rs.94,000/- fixed as the amount to be paid in lieu of service for 5 years.

2. The respondents in their reply statement have sought to ^{justify} their demand for Rs.1,31,035.00 and interest on the ground that on account of the enhancement in the pay and allowances of the applicant consequent on his promotion as Engineer SD during the period of sponsorship, the applicant was paid more than Rs.94,000/- which was named in the bond and that in terms of the contract, the applicant was bound to pay the entire amount of pay and allowances received by him during the period of the study as also the other expenses incurred by the Centre in connection with his sponsorship. Regarding

the claim of the applicant for proportionate deduction for the service of 1 year and 10 months, the respondent contends that in terms of the contract he is not entitled to any such deduction.

3. We have with meticulous care gone through the pleadings and documents brought on record and have heard Shri Ajith Prakash, learned counsel of the applicant and Shri C.N.Radhakrishnan, learned counsel of the respondents. Since the rights and liabilities of the parties flow from the terms of the bond executed by the applicant in favour of the respondent, for the purpose of easy reference and understanding, it is worthwhile to reproduce the bond:

"Bond to be executed by the Scientist/Engineers in DOS/ISRO when proceeding on assignment/educational programme at the Space Technology Cell(S.T.C.).

Know all men by these presents that we H.Arun, Resident of 'Pournami', VL-66, Vikas Lane, Trivandrum in the district of Trivandrum at present employed as Scientist/Engineer 'SC' in the Centre/Unit of Vikram Sarabhai Space Centre (hereinafter called "the obligor") and Smt. Valsa.B.Engineer 'SD', Staff Code No. 28191 wife of P.R.Babu of QDS,VSSC,Trivandrum-695022 and Shri C.Rajasekar,Engineer 'SF', Staff Code No.44927, son of R.Charles of QDS,VSSC,Trivandrum-695022(hereinafter called "the sureties") do hereby jointly and severally bind ourselves and our respective heirs, executors and administrators to the President of India(hereinafter called "the Government") on demand a sum of Rs.94,000/-(Rupees Ninety Four Thousand Only) (sum equivalent to the total amount of expenditure incurred by the Department of Space on the obligor for the assignment/educational programme in the Space Technology Cell)together with interest thereon from the date of demand at Government rates for the time being in force on Government loans and together with all costs,charges and expenses including interest that shall or may have been incurred by the Government.

Whereas the obligor is permitted to take up assignment/educational programme at the Space Technology Cell at IISC,Bangalore by the Government.

And whereas for the better protection of the Government, the obligor has agreed to execute this

bond with such condition as hereunder is written.

And whereas the said sureties have agreed to execute this bond as sureties on behalf of the above bounden H.Arun.

Now the condition of the above written obligation is that in the event of the obligor Shri H.Arun failing to complete the course of study, or to resume duty, or resigning from service or otherwise quitting service without returning to duty after the expiry of the work at the Space Technology Cell or at any time within a period a five years after his return to DOS/ISRO on completion of the assignment the obligor and the sureties shall forthwith pay to the Government, on demand, the said sum of Rs.94,000/- (Rupees Ninety Four Thousand only) (a sum equivalent to the total amount of expenditure incurred by the Department of Space on the obligor for the assignment/educational programme in the Space Technology Cell) together with interest thereon from the date of demand at Government rates for the time being in force.

And upon the obligor Shri H.Arun and, or Smt.Valsa.B. and, or Shri C.Rajasekar the sureties aforesaid making such payment, the above written obligation shall be void and of no effect, otherwise it shall be and remain in full force and virtue.

Provided always that the liability of the sureties hereunder shall not be impaired or discharged by reason of time being permitted or by any forbearance, act or omission of the Government or any person authorised by them (whether with or without the consent or knowledge of the sureties) nor shall it be necessary, for the Government to sue the obligor before suing the sureties Smt.Valsa.B. and Shri C.Rajasekar or any of them for the amounts due hereunder.

The bond shall in all respects be governed by the laws of India for the time being in force and the rights and liabilities hereunder shall where necessary be accordingly be determined by the appropriate Courts in India.

The bond is operative till it is fully discharged.

The Government of India have agreed to bear the stamp duty payable on this bond.

Signed and dated this Twenty Sixth day of July One Thousand Nine Hundred and Ninety Three. "



4. Learned counsel of the applicant argued that the sum named in the bond which the applicant was liable to pay to the respondent in the event of his failure to serve the VSSC for a period of 5 years, after successful completion of the course, ^{being Rs.94,000/- only,} the respondent cannot claim anything more than Rs.94,000/- and that even out of this Rs.94,000/-, the applicant is entitled to proportionate deduction for the period for which he has rendered service with the Centre after completion of the course. It is not in dispute that the applicant has after successful completion of the course served the VSSC for a period of 1 year and 10 months. The respondent's counsel argued that in terms of the bond executed by the applicant, on resigning from service or otherwise quitting the service without returning to duty after expiry of the course at the Space Technology Cell or any time within a period of 5 years after his return to DOS/ISRO on completion of the assignment, the applicant and his sureties were to pay immediately a sum of Rs.94,000/- and that there is no provision for proportionate deduction. Going through the bond (copy of which is at Annexure-A3), we are convinced that there is no provision in the bond which entitles the applicant to claim any proportionate deduction to the period of service rendered by him after completion of the course and before his quitting the service. As the applicant has resigned before expiry of a period of 5 years after completion of the course, he was in terms of the bond, liable to pay the entire amount stipulated in the bond. Therefore, the claim of the applicant for proportionate deduction is untenable.

5. Learned counsel of the applicant with considerable tenacity, argued that a claim for any sum in excess of Rs.94,000/- and interest from the date of demand by the respondent, is illegal and unjustified as the liability was ascertained and named in the bond. He argued that both in the preamble to the bond as also in the operative part of the bond, the sum ascertained payable in case the applicant quitting the service of the VSSC or on his failure to complete the course of study successfully, being only Rs.94,000/-, there is absolutely no justification for making any claim in excess of this amount. In the impugned orders at Annexures A8, A11 and A17 wherein higher amount than Rs.94,000/- has been claimed by the respondent, are therefore unsustainable and liable to be set aside, argued the learned counsel. Shri C.N.Radhakrishnan, learned counsel of the respondent invited our attention to clause 19 of the memorandum dated 19th July,1993(Annexure A2) issued by the respondent proposing to sponsor the applicant and two others for course of study in Indian institute of Science, Bangalore, which reads as follows:

" They are required to execute a bond(before proceeding to Bangalore) with two sureties, agreeing to service VSSC for a minimum period of 5 years after completing the course failing which the expenditure incurred on them will be recovered from them together with interest as per rules."

and argued that on account of a promotion of the applicant during the period of sponsorship, as the applicant was paid more pay and allowances than what was thought of at the time when the bond was executed, the enhanced amount also

formed part of the expenses incurred by the respondent in connection with the sponsorship of the applicant and that, therefore in accordance with clause 19 of the memorandum dated 19th July, 1993 and in terms of the preamble to the bond, the respondent is entitled to recover from the applicant not merely Rs.94,000/- but Rs.1,19,600/- plus TA/DA and Course Fee aggregating to Rs.1,31,035.00 with interest from the date of execution of the bond. Though a sum of Rs.94,000/- was named in the bond, the remainder of the claim could be brought under costs, charges and expenses including interest mentioned in the last sentence of the preamble of the bond, argued the learned counsel. We find ourselves unable to accept this argument advanced on behalf of the respondents. Rs.94,000/- mentioned in the preamble to the bond as also the operative paragraph of the bond, represented sum equivalent to the total amount of expenditure incurred by the Department of Space on the obligor for the assignment/educational programme in the Space Technology Cell. Even, according to the learned counsel for the respondents, this sum of Rs.94,000/- was worked out taking into account the pay and allowances that was expected to be paid to the applicant during the course of study plus TA/DA and Course Fee. The additional sum now claimed, represented the enhanced pay and allowances paid to the applicant on account of his promotion as Engineer 'SD' and therefore, that also being expenses incurred by the Centre in connection with the assignment of the applicant, the applicant is liable to refund that amount also, argued the learned counsel. (If the intention of the parties to the bond was that the applicant would pay to the respondent not only Rs.94,000/- but also any


additional amount that might have been paid to the applicant on account of enhanced wages, such a provision must have been included in the bond. Scanning through the entire body of the bond, we do not find any such intention expressed. The words "all costs, charges and expenses including interest that shall or may have been incurred by the Government", stipulated in the last sentence of the preamble to the bond, only represent the costs, charges and interest that might have to be incurred by the Government for realisation of the sum of Rs.94,000/- if not paid by the applicant on his resignation. Therefore, the argument that amount in excess of Rs.94,000/- claimed could be brought under this clause is untenable. The operative part of the bond is very specific regarding the liability of the obligor. It is to pay "on demand a sum of Rs.94,000/- (Rupees Ninety Four Thousand only) (sum equivalent to the total amount of expenditure incurred by the Department of Space on the obligor for the assignment/educational programme in the Space Technology Cell) together with interest thereon from the date of demand at Government rates for the time being in force" and nothing more than that. The claim of the respondent, therefore, that the applicant is liable to pay Rs.1,31,035.00 plus interest from the date of execution of the bond, is clearly untenable.)

6. Regarding the date from which the applicant is liable to pay interest also, there is a dispute. According to the learned counsel of the applicant, he is liable to pay interest on Rs.94,000/- only from the date of his resignation, whereas, according to the

respondent, the applicant is liable to pay the interest from the date of execution of the bond. On this point also, the condition in the bond is very clear that interest is to be paid from the date of demand at Government rates. The occasion to refund the amount named in the bond arises only on the acceptance of the resignation of the applicant by the respondent. Even prior to the date on which the resignation was accepted and the applicant was relieved from the Centre, the applicant had already paid to the respondent a sum of Rs.1,33,534/- under protest. Therefore, the payment of interest on Rs.94,000/- by the applicant, does not arise.

7. In the result, in the light of what is stated above, the application is allowed in part. The impugned orders at Annexures A8, A11 and A17 are set aside and the respondent is directed to refund to the applicant a sum of Rs.39,534/- (Rs.1,33,534.00 - Rs.94,000) within a period of one month from the date of communication of a copy of this order. The parties are directed to bear their costs.

Dated the 30th September, 1997.


S.K.GHOSAL
ADMINISTRATIVE MEMBER


A.V.HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A2: True copy of the Memorandum No.VSSC/EST/D/2.4(i)/93494 dated 19.7.1993 from Vikram Sarabhai Space Centre, Trivandrum to the Scientist/Engineer.
2. Annexure A3: True copy of the Bond Executed on 26.7.1993 by the applicant.
3. Annexure A7: True copy of the resignation letter dated 7.10.1996 of the applicant.
4. Annexure A8: True copy of the letter No.VSSC/EST/A/FCD/20433/9222, dated 8.11.1996 from the Asst. Admn. Officer(EST), Vikram Sarabhai Space Centre, Thiruvananthapuram to the applicant.
5. Annexure A11: True copy of the letter No.VSSC/EST/A/FCD/20433/127 dated 18.12.1996 from the Admn. Officer -I (EST), Vikram Sarabhai Space Centre, Trivandrum to the applicant.
6. Anexure A17: True copy of the letter No.VSSC/EST/A/FCD/20433 dated 27.12.96 from the Admn. Officer-I(EST) Vikram Sarabhai Space Centre, Thiruvananthapuram to the applicant.

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