

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE : 30.3.1990

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 41/89

P. Venugopala Iyengar

..Applicant

Vs.

1. Union of India represented by the
Secretary, Department of Space,
New Delhi and

2. Secretary, Department of Space,
Cauvery Bhavan, District office -
Road, Bangalore

..Respondents

M/s. S. Subramani &
R. Jagadishkumar

Counsel for the
applicant

Mr. P. A. Mohamed, ACGSC

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicant is now working as Head (Account) IFA, VSSC, Trivandrum. While he was working as Sr. Accounts Officer, he was deputed to Iraq from 7.11.1978 to 31.8.80 as per terms and conditions mentioned in Annexure-I order of the Government of India dated 7.11.1978. The relevant condition is extracted below:

"Contributory Provident Fund: During the period of foreign service, contributions of the Officer as well as Employer's share of contributions towards CAF in accordance with para 6 of the Orders issued under FRs 116 and 117 referred to in Appendix-2 of FRs and SRs read with Ministry of Finance, Department of Expenditure O.M.No. F1(14)-ETTI/13/76 dated 7.12.1976 will be paid in Foreign Exchange by the officer himself at the rates as will be intimated by the Head Accounts and IFA, VSSC, Thumba. The payment will be made by the officer directly through the Embassy of India, Baghdad, Iraq.

2. In terms of the aforesaid condition, the applicant has contributed a sum of Rs. 17,188.21 towards his P.F. contribution and an equal amount towards employer's contribution to the CPF payable by the employer for the period from 7.11.1978 to 31.8.1981. Subsequently in terms of Annexure-2 O.M. dated 6.6.1985 he exercised the option for getting pension benefits under the existing rules for the past service rendered by him. Para 1 of the O.M. provides that the service rendered by the Government servant who elects to be governed by the pension scheme shall be deemed to have been rendered in a pensionable establishment and shall count as service qualified for pension in the manner and to the extent provided in CCS (Pension) Rules 1972 in force from time to time.

3. Later the applicant submitted Annexure-III representation seeking permission to recover aforesaid amount of Rs. 17,188.21 which was paid by him as employer's contribution towards PF with interest on the ground that he was compelled to pay the employer's contribution while he was on deputation to foreign service. According to him since he has opted for pension in terms of Annexure-II his service must be deemed to be in pensionable establishment from the beginning and he is entitled to get back the amount which he was compelled to contribute as employer's share while in foreign service.

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4. But the request for refund of the amount was rejected as per Annexure-IV. The reason for the rejection is disclosed in the Government of India's letter No. 3/4(14)77-I dated 23.12.87. In this application the applicant is challenging Annexure-IV on the ground that the reason mentioned for rejection of the claim of the applicant is illegal. The payment made by him in terms of Annexure-I is ^{not} voluntary and hence liable to be refunded to the applicant.

5. The respondents filed a counter affidavit denying the allegations in the application. We have heard the arguments of the counsel on both sides and gone through the document carefully.

6. It is a fact that the applicant while in foreign service on deputation accepting the conditions in Annexure-I ~~xxxxxxxx~~ remitted a sum of Rs. 17,188.21 towards subscription to the C.P.F. as employer's share. It is also an admitted fact that he has not exercised the option to continue in C.P.F. scheme. Hence, he is deemed to have come over to GPF/Pension scheme. He exercised his option in terms of Annexure-II only on 2.10.1985 to come over to pension scheme under the Central Civil Services Pension Rules 1972. A subsequent option to come over to pension scheme does not give any right to the petitioner to claim selectively the right over that part of the Central Government Funds which

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in earlier circumstances, he had paid voluntarily in terms of Annexure-1.4 and full knowledge of the implications/ The fact that he had made this contribution on xxx behalf of the employer while he was in foreign service for enjoying the facility of serving in the foreign country for getting more benefits and additional facilities/ has not been denied by the applicant.4 The respondents have also stated in the counter affidavit that a number of employees working in the Department of Space were given such facility of working in foreign countries but they were not given the benefit of getting back the amount as claimed by the applicant.

7. The Government contribution on the CPF even if subscribed by the individual officers, which was standing to their credit as on the date of option to the pension scheme is deemed to have credited to the Government account with immediate effect as made clear in the counter affidavit filed by the respondents in this case. In the instant case the Government contribution paid by the applicant includes the employer's share of contribution towards Provident Fund during his service in foreign country viz. Iraq. This also forms part of Government contribution and there is no provision for making any repayment of the same to the applicant.

8. This view gets support from Rule 38(1)(b)(ii) and (iv) which reads as follows:

" (ii) the amount of contributions by Government with interest thereon standing to his credit in the Fund shall be repaid to Government.

- (iv) he shall thereupon be entitled to count towards pension service, rendered prior to the date of permanent transfer, to the extent permissible under the relevant Pension Rules."

In the light of the aforesaid provision, the applicant is deemed to have come to the pension scheme by not exercising his option to continue in CPF Scheme as per Annexure-II O.M. within the time and hence he became eligible to count his past service foregoing the Government contribution including the contribution paid by him on behalf of the employer together with the interest which stood credited in his CPF account as on 2.10.1985.

9. In this case the applicant was allowed to work in foreign service without break in service and he became eligible for pensionary benefits. At the same time he was able to enjoy the better facilities of a foreign assignment. There was no statutory or service compulsion for making contribution to the PF on behalf of the employer while he was in foreign service except Annexure-1. After having obtained such benefits by agreeing to the terms and conditions applicable to foreign service he cannot now turn around and say that he is entitled to get back the amount contributed by him towards the employer's share so as to enable him to continue his service in terms of the Government orders. He cannot blow hot and cold. In a situation analogous to this the Supreme Court held:

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"In any event, the applicant cannot approbate and reprobate. She had willingly applied for the post. She, therefore, took her chance and simply because the selection committee did not find her suitable for appointment, she cannot be heard to say the selection as invalid."

10. We had (a bench in which one of us was a party)

also recently held in O.A. 474/89 as follows:-

" In such circumstances we are reminded of the principles laid down by the Privy Council in *Kodoth Ambu Nair V. Echiken Charkera Kely Nair* AIR 1933 P.C. 167. At page 169 it was observed:

"...It is well accepted principle that a party cannot both approbate and reprobate. He cannot to use the words of *Honeyman, J.* in *Smith V. Baker* (1): "at the same time blow hot and cold. He cannot say at one time that the transaction is valid and thereby obtain some advantage to which he could only be entitled on the footing that it is valid, and at another say it is void for the purpose of securing some further advantage..."

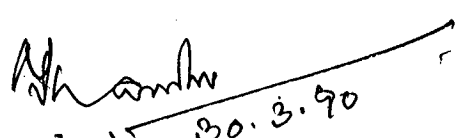
8. Dealing with the subject *Spencer Bower* in his celebrated book "The law Relating to Estoppel by Representation, 1977 Edn. at page 336 states that:

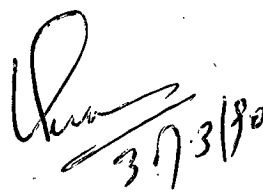
".... an election may yet be effective as between the parties, even though it has not been communicated by the elector to the other party, in case where, though that other party has not been prejudiced, the elector has accepted a benefit which could be his only because he has followed one course rather than the other. In such a case he will not be allowed to reverse his choice and to follow the second course available, while he retains the benefit, which could be his only if he followed the first course. The principle which brings about this result is some-times stated as declaring that a man may not simultaneously approbate and reprobate, or may not blow "hot and cold..."

11. Having considered the matter carefully we are satisfied that there is no merit in the application.

Accordingly we dismiss the application.

12. There is no order as to costs.


(N. Dharmadan)
Judicial Member


(N. V. Krishnan)
Administrative Member