

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. NO: 295/87

199

T.A. NO:

DATE OF DECISION

3.7.92

V.R. Marathe

Petitioner

Applicant in person

Advocate for the Petitioners

Versus

Union of India

Respondent

Mr. R. K. Shetty

Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~Ms.~~ Ms. Usha Savara, Member(A)

The Hon'ble Mr. Shri J.P. Sharma, Member(J)

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. Whether it needs to be circulated to other Benches of the Tribunal ? *no*

mbm\* MD

*Usha Savara*  
(Ms. Usha Savara)

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.295/87

V.R. Marathe,  
J N4-13/6, Sector 9,  
Vashi,  
New Bombay - 400 703.

.. Applicant

vs.

1. Union of India
2. Accounts Officer,  
Pay & Accounts Office,  
D.G.E.T., Min. of Labour,  
G.O.I.  
New Delhi.
3. Deputy Secretary to the  
Govt. of India,  
D.G.E.T.,  
Min. of Labour,  
New Delhi.
4. Secretary to the  
Govt. of India,  
Min. of Finance,  
New Delhi.
5. Director,  
Advanced Trg. Institute,  
Sion,  
Bombay - 400 022. .. Respondents

Coram: Hon'ble Ms. Usha Savara, Member(A)

Hon'ble Shri J.P. Sharma, Member(J)

Appearances:

1. Applicant in person.
2. Mr. R. K. Shetty  
Counsel for the Respondents.

JUDGMENT:

(Per Ms. Usha Savara, Member(A))

Date:

3.7.82

The applicant was the Deputy Director of Training, Advanced Training Institute, Sion, Bombay when he was sent on deputation of three years from October, '79 to October '82 on foreign assignment to Govt. of Mauritius. It is claimed by the applicant that at the relevant time he had already completed 33 years qualifying

service for full pensionary benefits, and therefore was not required to make pension contribution to the Govt. of India. He has impugned order dated 12.5.86 passed by Accounts Officer, P.A.O., D.G.E.T. Ministry of Labour by which the applicant has been informed that as per terms and conditions laid in letter dated 31.10.1979, it was clear that he had to pay pension contribution to the Govt. of India at provisional rate of Rs.130/- p.m. Further, if the applicant had opted for not counting the foreign service period for pensionary benefits, a clause to this effect should have initially been incorporated in the order dtd. 31.10.1979. Since it was not done the official cannot escape from paying the pension contribution, and therefore, he should be directed to pay the contributions immediately.

2. The applicant appeared personally, and argued his case. His entire claim is based on Govt. of India, Ministry of Finance Memo No.F1(u)-E-11(B)/71 dated 13th December, 1971 printed in Chaudhri's compilation of the FR & SR Vol.I. This memo reads as follows:

"FR 121

(4) According to F.R.121 a Govt. servant transferred to foreign service may not without sanction of the Govt. accept a pension or gratuity from his foreign employer in respect of such service.

However, in case of deputation of C.Govt. officers on foreign service to the developing countries of Africa such as Govt. of Zambia, Tanzania etc. who offer gratuity to the deputationist on the conclusion of their foreign service with those Govt., the officers are allowed to receive the gratuity subject to the condition that during the period of foreign service no

payment of pension contribution is made to the Govt. of India by or on behalf of the officers and the period of service with the foreign Govt. does not count for the purpose of calculation of pension under the G.O.I.. It is also provided that the gratuity payable to the officers by foreign employer will, after expiry of foreign service with the foreign Govt. be credited to the revenue of the Govt. of India. "

3. It is the case of the applicant that he is fully covered by this memo, and had complied with the provision. Moreover, he had already put in 31 years service prior to his departure for Mauritius and on expiry of term of deputation, he continued his service upto 19.4.86, when he completed 58 years of age. He, thereby, put about  $3\frac{1}{2}$  years of service after return from deputation, so he was entitled to full pensionary benefits without counting the period of deputation. However, due to insistence of the Accounts Officer, the applicant deposited Rs.10,524/- (Rs.7907/- towards P.C. and Rs.2617/- towards interest) on 4.10.1986 before Pension Payment Order could be issued to him. The P.A.O. had even informed him on 12.6.86 that if pension contributions were not made by him, the deputation period would be treated as break in service along with forfeiture of entire past service benefits. It was in these compelling circumstances, that the applicant deposited the sum of Rs.10,524/- It is, therefore, prayed that the respondents be directed to refund the entire amount to the applicant.

4. Shri R.K. Shetty appeared for the respondents and draw our attention to the various provisions of F.R.16,115,116,117,119,120 & 121. He submitted that in view of these rules, the applicant did not have the option for non-payment of pension

contribution to the respondents. He pointed out that having regard to the above provisions, the applicant had no right to virtually delete a portion of his service from his entire qualifying service for the purpose of pension, and that too unilaterally. In view of the fact that pension contribution was not paid for a period of three years of '79 to '82, how could the total service be treated as continuous? Since the rules do not permit, the applicant's claim deserves to be rejected.

5. The facts are undisputed, so we may not again refer to them. The only question is whether the applicant was correct in his assumption that as he was on deputation on foreign assignment to Mauritius, and since he had qualifying service of 33 years not counting the deputation period, he need not make his pension contribution? While FR 115, 116, 117, 119 & 120 refer to contributions to be made when any Govt. servant is in foreign service, FR 121 specifically ~~some~~ covers the case of a Govt. servant who is transferred to foreign service, as is the case of the applicant. G.I.M.F., O.M.No.F1(11)-E III (B)71 dtd. 7th January, 1974 specifically refers to cases of Govt. servants who are on deputation to developing countries, Asia, Africa & Latin America. "A question has been raised whether Central Government Officers on foreign service to the developing countries of Asia, Africa and Latin America who are allowed to receive gratuity payable ~~to~~ by the foreign Governments should have the option to make pension contributions to the Government of India and count the foreign service for pension. It has been decided that as the gratuity offered by these foreign Governments is not a pensionary benefit, Central Government employees deputed to these Governments should be required to pay the usual pension

contributions to the Central Government and thus count the period ~~as~~ for pension under the Central Government. A specific condition to the effect should invariably be included in the terms of deputation." Having regard to the above, it can be seen that there is a legal requirement of payment of monthly pension contribution, which cannot be obviated by his choice or option. This position was made clear to the applicant by letter dated 18-7-1986 addressed to him by D.S., Min. of A.R., Govt. of India.

6. In the facts & circumstances of the case the application is dismissed as being devoid of merit, but there is no order as to costs.

*J. P. Sharma*  
(J.P.SHARMA) 3-7-92  
Member(J)

*U. Savara*  
(Ms.USHA SAVARA) 3-7-92  
Member(A)

MD