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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 355/92

199

~~ExAxxMOr~~

DATE OF DECISION 31.7.92

Shri P.G. Sansare

Petitioner

Shri G.K. Masand

Advocate for the Petitioners

Versus

Union of India and others

Respondent

Shri J.G. Sawant

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

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 ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

mbm*

S.K.D
(S.K. DHAON)
VICE CHAIRMAN

(C)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 355/92

Shri P.G. Sansare

... Applicant.

V/s.

Union of India through
General Manager,
Central Railway
Bombay V.T.

Chief Personnel Officer
(Engineering)
Central Railway
Bombay V.T.

Dy. Chief Engineer (Constn.) I
Ajni, Central Railway,
Nagpur.

... Respondents.

CORAM: Hon'ble Shri Justice S.K.Dhaon, Vice Chairman

Hon'ble Shri M.Y.Priolkar, Member (A)

Appearance:

Shri G.K.Masand, counsel
for the applicant.

Shri J.G. Sawant, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 31.7.92

{ Per Shri S.K.Dhaon, Vice Chairman }

The applicant, Inspector of Works Grade III, is aggrieved by a communication dated 18.11.91 of the Dy. Chief Engineer (Constn.) whereby he was informed that his letter of resignation could be accepted after he deposited a sum of Rs. 23668.87. The other relief claimed is that the respondents may be directed to release four advance increments in favour of the applicant.

A counter affidavit have been filed. Rejoinder affidavit too have been filed. Counsel for the parties have been heard. With the consent of learned counsel for the parties, this application is being finally disposed off even though it has not been finally admitted as yet.

The admitted facts are these: The applicant was appointed as an Apprentice. He joined on 9.7.88. On 21.11.89 he completed his period of Apprentiship. On 15.9.91 he sent a notice stating therein that he wished to resign after the expiry of a period of one month. The resignation was not accepted. Instead, a letter dated 18.11.91 afore-mentioned was issued.

The stand taken by the respondents is that the applicant could not be permitted to resign from service unless and until he had either completed 5 years in service or he had paid up the amount received by him towards stipend etc. together with 12% of the cost of training, the total being Rs. 23668.87. The applicant's case is that he is entitled to resign as a matter of right and the respondents are under an obligation to accept his resignation. The respondents have no legal right to insist that the applicant should complete 5 years of service. The respondents are also not entitled to insist upon the applicant paying any amount.

The respondents can succeed if they can demonstrate that the applicant is under some law or under some directions or order having the force of law or under a valid contract bound to render 5 years service before leaving their service and in the event of the applicant's failure to do so he is liable to pay the amount as claimed by them (the respondent).

Qy No statutory rule has been brought to our notice. Reliance is, however, placed upon a certain communication of the Railway Board to which we shall refer a little later.

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On, 23.9.86, by means of an employment notice No. 2/86, the respondents invited applications for filling up certain posts in Central and Western Railway. We are concerned with category No.24 referred to in the said notice. The notice does not contain the condition that a person appointed after completing the period of apprenticeship is not entitled to resign from service unless and until he has completed 5 years of service. It also does not say that if a person has not completed the said period of service he can resign only after making a certain payment to the respondents.

We have before us a copy of the letter of appointment issued to the applicant. In this letter no less than 18 conditions are enumerated. In our opinion, the only condition which may have some relevance is condition No.10. According to this condition, services of the applicant were purely temporary and they could be done away with after giving 14 days notice. It is also provided therein that one month's notice would be required for terminating the services of an employee if he had completed three years in service. Thus it is clear that the letter of appointment does not contain the condition which is sought to be imposed by the respondents upon the applicant. We have already indicated that on 15.9.91 the applicant had given one month's notice. We have also before us a reminder sent by the applicant on 26.10.91.

A copy of the letter dated 25.11.61 of the Railway Board has been placed before us. The opening para of this letter reads:

" The Board have decided that offers of appointment to the candidates selected in all trainee categories should make it clear that:

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- i) The trainee, if selected for appointment against a working post on completion of his/her training will have to serve the Railway Administration for a minimum period of five years, if required by the Administration. In case the trainee fails to serve the Administration for a minimum period of five years or wishes to withdraw from training for any reasons he/she will be liable to refund the whole cost of his/her training as well as any other money paid to him/her during the period of training by way of stipend/pay etc. In paragraph 3 of the said letter of the Railway Board it is emphasised that the afore mentioned conditions may also be made clear in the employment notice issued by the Railway Service Commission or other recruiting authorities, as the case may be. "(Underlining by us)"

We have already adverted to the employment notice issued by the respondents as well as to the letter of appointment issued to the applicant. We have emphasised and we repeat that neither in the employment notice nor in the letter of appointment, there is a whisper of the condition sought to ^{be} imposed by the respondents upon the applicant.

We now come to the communication dated 21.1.86 of the Board. Nothing has been shown to us to indicate that it has a statutory force. The language used therein, as we shall presently see, also does not indicate that through it some mandate is being given. It emphasises that the Apprentice appointed on successful completion of training programme are required to serve the Railway for a minimum period of 5 years after completing the period of training. If they do not serve the Railway for the afore said minimum period on completion of training, the cost of training is to be recovered from them. In para 2 it is mentioned that, where a person resigns, one of the

check points before accepting the resignation should be about his liability, if any, to refund the cost of training. The expression "required" used in the said communication has significance. It means that the provisions of service conditions are to be found elsewhere. The conditions contained in the letter dt. 25.11.1961 are required to form part of the contract of service. The said letter emphasises that the trainee concerned should be apprised of the conditions at the stage when an offer of appointment is made to him. The communication dated 21.1.1986 does not purport to supersede the Board's letter dt. 25.11.1961. Therefore, the two documents are to be read together. The conditions laid down in the Board's communication dated 21.1.86 would be applicable to a particular trainee only if he or she ~~has~~ been informed of the conditions laid down in the letter dtd. 25.11.61. Therefore, independent of the contents of the letter dtd. 25.11.61, the Board's communication dt. 21.1.86 cannot be enforced against the applicant. If that is done, it will be unfair. No one can be expected to be bound by a condition not notified either expressly or implidly at the appropriate stage. There is neither any averment on behalf of the respondents nor any material on record to show that the applicant was, at any stage, prior to 15.9.91, when he sent his resignation, informed of the condition that he could not tender his resignation or sever his relationship as an employee of the respondents, unless he had either completed 5 years of service or he had paid up a certain amount.

Reliance is also placed by the learned counsel for the respondents upon a form of an agreement. A true copy of the same has been filed as Annexure R II to the reply. It is the respondent's own case that the applicant was not called upon to enter into an agreement in the said form. It is the respondent's own case that the applicant was recruited as Apprentice before executing the agreement in the form aforesaid and he was also issued the letter of appointment without being asked to enter into the agreement in the said form. Nothing there will turn upon the fact that certain other employees, who were similarly situated as the applicant, had entered into the agreement in accordance with the format (Ex. R.II) Those, who entered into the agreement would be bound by the same and those who had not entered into the agreement either expressly or implicitly cannot be held bound by any condition contained in such an agreement. We are, therefore, of the opinion that the respondents are not justified in refusing to ~~by~~ accepting the resignation of the applicant on the ground stated by them. We, therefore, direct the respondents to accept the resignation of the applicant and to issue a discharge certificate to him, if he has complied with the other requirements. The respondents shall send a communication to the applicant that his resignation has been accepted within a period of one month from today. They shall also issue a discharge certificate, if permissible under the law, to the applicant within the said period.

The applicant relies upon the communications dated 29.3.39 and 14.5.36 of the Railway Board in support of his case that he was entitled to be given 4 advance increments on 21.11.39, when he was absorbed on regular basis. Learned counsel for the respondents

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has not disputed the relevance of the said communications of the Board. He has also not disputed the fact that on 21.11.39 the applicant was entitled to be given four advance increments. His only objection is that, now, the applicant having expressed the intention to resign and sever his relationship as an employee of the respondents, he is estopped from enforcing the claim of the sum of money which may be equivalent to the said increments. His contention is that in the payment of advance increments future adjustments are implicit. And adjustment is possible only if an employee continue to be in service.

We had heard this matter on 30.7.92 and had adjourned the hearing for today so as to enable the learned counsel for the respondents to produce before us some rule or directions having the force of law to substantiate his submissions. Learned counsel **very** fairly stated before us that he ^{was} ~~is~~ not in a position to place any relevant material. On first principles, we are unable to agree with the contention advanced on behalf of respondents. The right to receive four increments accrued to the applicant on 21.11.39, The right crystalised on that day into a definite sum of money. From that day onwards, the money was kept by the respondents in trust for the applicant. The respondents, were, therefore liable to pay this amount to the applicant on 21.11.39. Therefore, there can be no difficulty in our enforcing the right of the applicant to realise the said amount from the Railways.


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
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We, therefore, direct the respondents to quantify the amounts payable to the applicant towards four advance increments and pay the same to the applicant within a period of four months from today.

This application succeeds and is allowed. The respondents shall act in accordance with the direction given by us above.

There shall be no order as to costs.


(M.Y. PRIOLKAR)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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