

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 07th August, 2008

ORIGINATION APPLICATION NO. 331/2006

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

C.P. Anthony aged about 46 years, son of Late Shri H.L. Anthony, resident of Anchee Ka Baas, Bandikui, District Dausa and presently working as Post Graduate Teacher in the pay scale (6500-10500) at Railway Senior Secondary School, Bandikui, District Dausa, Rajasthan.

....APPLICANT

(By Advocate: Mr. Saugath Roy)

VERSUS

1. Union of India through the General Manager, Northern Western Railway, Hasanpura, Jaipur.
2. The Life Insurance Corporation of India through its Regional manager, Bhawani Singh Marg, Jaipur (Rajasthan).

.....RESPONDENTS

(By Advocate: Mr. Anupam Agarwal - Respondent No. 1)
Mr. Prasant Mantri - Respondent No. 2)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following relief:-

- (i) By an appropriate order or direction, after summoning the entire record of the case and examining the same be pleased to direct the respondent no. 1, Railways to deposit the premium of "salary saving Scheme floated by LIC" with interest and the respondent no. 2 LIC

be further directed to revive the policy of the applicant lapsed, due to non payment of premium by the railways, even though premium Rs.282 per month were deducted from the salary of the applicant.

- (ii) By an appropriate order or direction, the respondents may be directed not to reduce the basic salary of the applicant and not to extent the date of increment from February 2006 to July, 2006.
- (iii) Any prejudicial order, if passed against the interest of the applicant during the pendency of the application, the same may kindly be taken on record and after examining the same be quashed and set aside.
- (iv) Any other appropriate order or direction, which may be considered just and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant.
- (v) Cost of the application be quantified in favour of the applicant."

2. The grievance of the applicant in this case is that he has taken Money Back Insurance Policy from Respondent No. 2, Life Insurance Corporation, and consequently amount of the premium was to be deducted from the salary of the applicant. Since after two installments, amount of the premium was not deducted from the salary of the applicant, as such, the policy lapsed. It is on these facts the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. Respondent no. 1 and Respondent no. 2 have filed separate reply.

4. In reply filed by respondent no. 2, they have also taken the preliminary objection regarding maintainability

of the OA. It is also stated that the applicant is the consumer of Respondent no. 2 i.e. Life Insurance Corporation, as such cause of action does not fall under the ambit of this Tribunal. According to respondent no. 2, the proper jurisdiction of the cause of action falls was under the Hon'ble Consumer Protection Forum. On merit, respondent no. 2 has stated that policy of the applicant has lapsed as no premium amount was received w.e.f. March, 1995 and onwards from the employer of the applicant. It is also stated that as per their record only the premium installments upto February, 1995 has been received and adjusted and pending premium installments for the period of March, 1995 to August, 1995 was not deposited. A letter dated 14.08.1995 (Annexure R-2/1) was written to the applicant to deposit the same through the employer. It is further stated that respondent no. 2 again sent letter to the applicant to inform as to in which branch of respondent no. 2 the premium from March, 1995 to October, 1995 was deposited but the applicant did not reply to this letter also. Copy of this letter has been placed on record as Annexure R-2/2. According to the respondents, in the condition no. 2 of the policy, it has been categorically stated that a grace period of one month but not less than 30 days will be allowed for payment of yearly, half yearly or quarterly premium and 15 days for monthly premiums. Since the installments were not received as such the policy has lapsed. The respondent no. 2 has also raised question of limitation. According to the respondent, the cause of action arose in the year 1995 whereas this OA has been filed in the year 2006 i.e. after a lapse of 11 years.

4. Similarly, respondent no. 1 has also raised objection regarding maintainability of the OA on the ground that non deduction of premium of LIC policy is not covered under the definition of service matter as provided in the Administrative Tribunal's Act, 1985. At the most, the same being at the best a deficiency in service can be challenged before the Consumer Forum. Accordingly, the present OA is not maintainable. Further respondent No. 1 has also raised question of limitation as cause of action, if any, has arisen in the year 1995. Respondent No. 1 has also stated that as per provisions of 19 of the Administrative Tribunal's Act, 1985, it is the impugned order which is to be challenged but in this case there is no impugned order and as such, the present OA is not maintainable.

5. The applicant has filed rejoinder thereby reiterating the submissions made in the OA. The applicant has also stated that he has not received any communication, as alleged by respondent no. 2.

6. We have heard the learned counsel for the parties. Since the question of maintainability of this OA has been raised, as such this objection has to be dealt with at the first instance. We are not inclined to agree with the submission of the learned counsel for the applicant that payment of premiums which are to be deducted from the salary of the applicant pursuant to tri-part agreement arising between Life Insurance Corporation, employer and employee is a condition of service as such service matter. Section 3(q) of CAT, Act 1985 defines service matter as follows:-

442

"(q) "Service matters", in relation to a person, means all matter relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the government, as respects -

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;

7. Thus according to us, amount of premium being deducted from the salary of the applicant does not fall within any of the category mentioned above. Further any other matter whatsoever as mentioned in Clause (v) supra means condition of service and every right or privilege that accrues is not condition of service. Test to be satisfied is whether it regulates the holding of post. According to us holding of post means when there is proximate nexus between right of matter of holding of post. If it does not have being on post it cannot be said to be holding of post. Thus we are inclined to agree with the stand taken by the respondents that this is a matter which at the most may fall under the jurisdiction of the Consumer Protection Forum.


8. Learned counsel for the applicant has drawn our attention to the judgement of the Apex Court in the case of Chairman, Life Insurance Corporation & Others vs. Rajiv Kumar Bhaskar, 2005(6) SCC 118 and argued that in view of

the judgement rendered by the Apex Court, this Tribunal has got jurisdiction to entertain the matter.

9. We have given due consideration to the submission made by the learned counsel for the applicant. We fail to understand as to how this judgement is helpful to the applicant. That was a case where dispute was arising under the 'Contract Act' and Hon'ble Supreme Court after relying upon the various provisions of Contract Act, 1872 gave finding regarding Relationship of Principal and Agent and it was in that context that provisions of the saving schemes which were issued under the LIC Corporation Act, 1956 were interpreted. It may be stated that matter which was carried before the Apex Court has arisen out of the decision rendered by the Hon'ble High court as well as the judgement rendered by the District Consumer Forum and has not arisen from the judgement rendered by the Tribunal and as such, judgement rendered by the Apex Court is not applicable in support of the issue involved in this case.

10. For the foregoing reasons, we are of the view that this Tribunal has got no jurisdiction to entertain this OA. Accordingly, the present OA is disposed of on this ground along without entering into merit of the case.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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