

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 3637/2013

Order Reserved on: 05.09.2016
Order Pronounced on: 16.09.2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Ms. Neelam Agarwal,
Legal Representative &
W/o late Dr. Shyam S. Agarwal,
R/o C-204, Asiana Apartment,
Mayur Vihar Phase-I Extension,
Delhi-110 091

- Applicant

(By Advocate: Shri D.S. Chaudhary)

V E R S U S

India Trade Promotion Organization (ITPO)
Through its Chairman,
Pragati Bhawan, Pragati Maidan,
New Delhi-110001

- Respondent

(By Advocate: Mr. Piyush Sharma)

O R D E R

Dr. B.K. Sinha, Member (A):

The principal issue involved in this O.A. is that whether the date of retirement of the deceased husband of the applicant should be reckoned from 06.08.2007 as decided by the respondent or from 05.02.2011 as claimed by the applicant.

2. The applicant, in this regard, is aggrieved with the inaction of the respondent to act on her representation,

dated 03.11.2012, seeking expedite clearance of dues of her late husband. The applicant has sought the following reliefs:-

- “8.1 The respondent be directed to treat the date of retirement of the Applicant’s deceased husband as 5.02.2011 instead of 06.08.2007. Consequently, all the retirement benefits be paid to the Applicant till the date of retirement of her deceased husband.
- 8.2 The respondent be directed to refund the recovery made from the retirement benefits of the Applicant’s deceased husband.
- 8.3 The Respondent be directed to refund Rs.2 Lac recovered from the Applicant’s husband on 28.07.2007.
- 8.4 The respondent be directed to pay interest @18% per annum on the delayed payment.
- 8.5 Cost of the proceedings may be allowed.
- 8.6 Any other order(s) as deemed fit and proper to secure the ends of justice may be passed.”

3. The case of the applicant, briefly stated, is that her deceased husband was holding a permanent lien with the respondent and was posted as Resident Director at Frankfurt, Germany, vide order dated 17.02.2004 for a period of three years from the date of his taking over charge. The deceased husband of the applicant was governed by Contributory Provident Fund and Family Pension Fundamental Rules of ITPO where he would have to subscribe at minimum rate of 12% of his pay. The applicant was further required to provide an undertaking

that on termination of his posting abroad, he shall return to India and serve ITPO for a period of at least two years after return. In the meantime, the applicant's deceased husband was promoted to the post of Sr. General Manager, TD Cadre I the scale of Rs.20500-26500/- from the date of assumption of his charge. Vide communication dated 30.09.2005, the applicant's deceased husband, while accepting the promotion, requested to be allowed to complete his term as Resident Director and that his promotion to be treated as per forma promotion, protecting his pay and seniority. In the meantime, the applicant's deceased husband was strongly recommended for the post of Export Promotion Council of Kenya vide communication dated 11.01.2007. The applicant's deceased husband made a request to be relieved from the post of Resident Director, Frankfurt, for joining an international assignment as Advisor to Commonwealth Funder for Technical Cooperation (hereinafter referred to as "CFTC"). This was accepted by the respondent with certain conditions. For the sake of clarity, the text of the communication is being reproduced as below:-

"Please refer to your letter dated 18-01-2007 informing about an International assignment being offered by CFTC and your willingness to accept the same with a request to relieve you after reverting back to Hqrs. on completion of your present tenure as RD (Frankfurt).

We would like to inform you that the Competent Authority has accepted your request subject to condition that you are required to pay Rs.2.00 lakhs to ITPO in pursuance to the Undertaking and the Guarantee dated 19-05-2004 furnished by you on the eve of your posting as RD (Frankfurt)."

The deceased husband of the applicant assumed his duty at New Delhi on 25.07.2007 and deposited sum of Rs.2.00 lakhs vide cheque no. 137499 dated 28.07.2007 in favour of the respondents. The late husband of the applicant was ordered to be relieved of his duties from ITPO to join CFTC w.e.f. 06.08.2007 AN). For the sake of clarity, OM dated 06.08.2007 fixing the terms and conditions of the foreign assignment, is being reproduced as below:-

- “1. His lien on the post of Sr. General-Manager for a period of two years shall commence from 07.08.2007 and terminate on 06-08-2009. He shall report for his duties at ITPO Hqrs. at New Delhi on 07-08-2009 and no further extension shall be granted.
2. During the period of his lien on international assignment, he shall be treated on foreign service out of India.
3. The pay and allowances etc. during the period of foreign service out of India, will be paid by the foreign employer i.e. Commonwealth Fund for Technical Cooperation (CFTC)/Export Promotion Council of Kenya (EPC, Kenya) as admissible under the rules of foreign employer.
4. No medical facilities and LTC benefits shall be admissible to him and the entitled members of his family during the period of international assignment on foreign service.
5. The travelling allowance (including transportation of personal effects) both in respect of

journey for proceeding to the station of posting on foreign service out of India and the journey on reversion therefrom to ITPO Hqrs. at New Delhi shall be borne by the foreign employer.

6. During the period of his international assignment o foreign service, he shall be entitled to leave and leave salary as admissible under the rules of foreign employer. The leave salary in respect of leave granted by the foreign employer shall be paid by the foreign employer. No leave or part thereof earned by him on foreign assignment shall be credited to his leave account in ITPO.

7. ITPO shall not be liable to pay any leave salary/emoluments in respect of any disability leave granted to him on account of any disability occurred in and through the international assignment on foreign service out of India even if such disability manifests itself after the termination of foreign assignment.

8. During the period of foreign service out of India, he will be required to subscribe to the Contributory Provident Fund at the rate he has been subscribing at the time of proceeding on foreign service. In regard to the employer's contribution, the same shall be paid by Shri Agrawal himself, unless the foreign employer consents to pay them on his behalf. All contributions and subscriptions to the Contributory Provident Fund of ITPO for the period of foreign service out of India shall be made in the foreign currency in which the salary/emoluments is paid by the foreign employer.

9. The gratuity payable to him by the foreign employer shall, on the expiry of his international assignment, be deposited by him for crediting the same in his Contributory Provident Fund (CPF) Account of ITPO. The amount of the gratuity shall become a part of his accumulations in the CPF Account.

10. He shall also have to repay the balance towards any loan and advances, e.g. House Building Advance, Scooter/Motor Car Advance, etc. which may be outstanding against him along with interest due thereon before/at the time of proceeding on foreign service.

11. He shall also register himself with the Indian Mission immediately on his arrival in the country of assignment.

12. He shall have the option to resign from the services of ITPO without returning to India if he chooses to continue on international/foreign assignment beyond the permissible period.

13. For the other matters not specifically covered under the above terms and conditions, he shall be governed by the instructions/Orders/Rule & Regulations of ITPO and Govt. of India Orders issued from time to time.”

4. The further case of the applicant is that the respondent floated Voluntary Retirement Scheme vide their OM dated 07.10.2010 against which her deceased husband submitted his application seeking voluntary retirement w.e.f. 01.02.2011 on 07.01.2011. The applicant is aggrieved that the request of her deceased husband was rejected on 24.02.2011 again which he had submitted a representation dated 25.03.2011. The respondent vide their OM dated 28.06.2011 ordered recovery of Rs. 37462/- as electricity charges even for a period when he had not been posted as Resident Director, Frankfurt. An application for VRS of the deceased husband of the applicant was rejected vide communication dated 24.02.2011, which is being reproduced, for easy reference, as under:-

“1. Please refer to your application dated 12.1.2011 addressed to CMB, ITPO opting to seek voluntary retirement from the services of ITPO. In this connection, we would like to convey you that you had not joined ITPO on 6.2.11 though lien to the

post was available upto 5.2.2011. The Terms & Conditions of your foreign assignment, inter alia, provides an option to resign from the services of ITPO without returning to India, if you had chosen to continue for internationally foreign assignment beyond the permissible limit. Hence, by virtue of the provisions of terms & conditions of foreign assignment, you would be deemed to have resigned from the services of IPTO.

2. Under the Voluntary Retirement Scheme of ITPO, the officials on deputation are not eligible apply for VRS and hence, your application cannot be entertained and considered.
3. This is being conveyed to you with the approval of competent authority.”

5. The respondent, vide their letter dated 12.01.2012, informed the deceased husband of the applicant that he was treated as being retired from service w.e.f. 06.08.2007, the date on which he was relieved to join CRTC in the following terms:-

“Please refer to your e-mail dated 9.9.2011 and 15.9.2011 regarding payment of medical leave encashment lying in your credit.

In this connection, the Competent Authority has kindly re-examined your request for encashment of HPL lying in your credit and is not acceded to as you are treated as retired from the services of ITPO on 6.8.2007 and the BOD of ITPO has kindly approved encashment of HPL subject to maximum 300 w.e.f. 16.6.2009.”

The respondent had, therefore, illegally treated his date of retirement w.e.f. 06.08.2007, whereas it should have been 05.02.2011.

6. The applicant has based her case upon the following grounds:-

- (i) The application for VRS by the deceased husband of the applicant has been wrongly rejected as he was holding a permanent lien to his post and was not on deputation. He was also otherwise eligible for VRS in terms of eligibility, which is being reproduced below:-

“3. ELIGIBILITY:

- (a) All persons employed on permanent/regular basis shall be eligible for seeking Voluntary Retirement under this scheme.
- (b) However, the employees falling in the following categories as determined by the organization are not eligible to seek Voluntary Retirement under the scheme:
 - (i) Appointed on contract basis or on deputation
 - (ii) Pending disciplinary action.”

(ii) The deceased husband of the applicant had never resigned from service and remained therein up to 05.02.2011.

(iii) The deceased husband of the applicant was coerced into depositing Rs. 2 lacs for his relieving to join foreign assignment in CFTC. The deceased husband of the applicant was

singled out for this treatment thereby violating under Articles 14 and 16 of the Constitution of India.

7. Per contra, the respondent has filed a counter affidavit rebutting the claims of the applicant, except insofar as they lay in a factual matrix. The argument of the respondent is that the deceased husband of the applicant was considered a good employee and, therefore, the respondent – department had gone out of his way to accommodate his interest, even when they were not strictly within the rules. The foreign assignment of deceased husband of the applicant, which is a deputation, was granted for a period of two years from 07.08.2007 till 06.08.2009 on consequent of which, the deceased husband of the applicant would report to ITPO Hqrs. at New Delhi on 07.08.2009 with no further extensions to be granted. During this period of deputation, he was also required to pay the contributory provident fund at the rate of subscription at his own unless foreign employer consented to pay them on his behalf. He was also required to deposit the gratuity in the same manner, as contribution to the CPF. He was also given an option to resign from service under Para 12 of the communication dated 06.08.2007 without returning to India. In the instant case, the

deceased husband of the applicant chose to continue on international/foreign assignment beyond the permissible period. In other words, it had been strictly stipulated that if he failed to return by 07.08.2009, his services would stand terminated. In that case, however, if he chose to continue with the foreign assignment, he would have the option to resign from ITPO without returning to India. Therefore, there was absolutely no scope for treating him in services beyond 07.08.2009. In the second place, the deceased husband of the applicant had never submitted his CPF contribution which he had received from his foreign employer and, therefore, during these two years from 07.08.2007 to 06.08.2009, he had not added anything to his contribution. Hence, the respondent was compelled to treat his superannuation w.e.f. 07.08.2007, as there had been no incremental contribution during these period.

The respondent has enclosed documents to establish that the deceased husband of the applicant had received gratuity from his foreign employer. The applicant had also appeared before the Lok Adalat on 06.12.2014 and 10.01.2015 where the respondent had agreed to settle the matter. However, the applicant did not turn up subsequently and effort at an amicable compromise ended at naught. Learned counsel for the respondent fairly

submitted that taking into account the services performed by the deceased husband of the applicant, the respondent had agreed to review their forfeiture of Rs.2 lacs which the deceased husband of the applicant had submitted by way of security.

8. We have considered the pleadings of rival parties as also the documents adduced and have patiently heard the arguments advanced by the learned counsels for the parties.

9. In this case, it is clear that the action of the respondent in treating the deceased husband of the applicant as retired w.e.f. 06.08.2007 was wrong because they themselves had granted permission for a deputation of two years on foreign assignment. At the same time, it is also well accepted that the deceased husband of the applicant did not report back on duty on 07.08.2009, as he was wont to do and therefore, his services will have deemed to be terminated under the terms of communication dated 06.08.2007. Therefore, possibly, he does not have any claim whatsoever for treating his retirement w.e.f. 05.02.2011. In this respect, the claims of rival parties are both misplaced.

10. At the same time, we also take cognizance of the fact that the applicant has neither joined the respondent –

organization on completion of his tenure to CFTC nor has deposited contribution towards CPF, which, we understand from the documents submitted by the respondents, had been drawing regularly from the foreign employer of the deceased husband of the applicant. Therefore, no interest on the additional amount deposited could have accrued to the deceased husband of the applicant. The provisions of FR-13 are abundantly clear as reproduced hereunder:-

“F.R.13. [A Government servant who has acquired lien on a post retains the lien on that post;

- (a) while performing the duties of that post;
- (b) while on foreign service, or holding a temporary post or officiating in another post;
- (c) during joining time on transfer to another post, unless he is transferred along with his title to a post on lower pay, in which case his lien is transferred to the new post from the date on which he is relieved of his duties in the earlier post;
- (d) while on leave; and
- (e) while under suspension

Provided that no lien of a Government servant shall be retained:

- (i) Where a Government servant has proceeded on immediate absorption basis to a post or service outside his service/cadre/post in the Government from the date of absorption; and
- (ii) On foreign service/deputation beyond the maximum limit admissible under the orders of the Government issued from time to time.]

11. The DoP&T OM dated 01.04.1981 provides that the maximum period of deputation on foreign assignment shall be for two years extendable to five years.

12. However, in the instant case, the conditions of deputation clearly provided that the deceased husband of the applicant had to report back for duty on 07.08.2009, which he failed to do so. Therefore, the question of extension of five years' terms does not arise.

13. In conclusion, we can say that the deceased husband of the applicant had undisputedly not reported back while continuing with his foreign assignment. The question of his VRS does not arise because his services came to an end when he failed to report on 07.08.2009 without there being any request for extension. We also appreciate the stand of the respondent who have acknowledged that his deceased husband of the applicant was a good officer, who had contributed to the organization and they were trying to help him by not initiating departmental proceedings against him. It was further agreed during the course of Lok Adalat to grant further concessions in the shape of refund amount of Rs. 2 lakhs, which had been forfeited earlier as an amount under bond. Hence via-media has to be devised. We, therefore, order the following:-

- (i) The respondent shall treat the date of retirement of the deceased husband of the applicant as 07.08.2009 up to which he shall be entitled to all benefits, as permissible under the rules.
- (ii) The applicant has the option to deposit the amount towards CPF and such other amounts with the respondent and they shall reckon the terminal dues from 07.08.2009, which shall be calculated on the basis of the balance dues.
- (iii) The respondent shall refund a sum of Rs.2 lacs recovered from the deceased husband of the applicant on 28.07.2007 with such interest as have accrued from the bank on this amount.

14. With the above directions, the OA is disposed of. No order as to costs.

(Dr. B.K. Sinha)
Member (A)

(Justice M.S. Sullar)
Member (J)

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