

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 351/00934/AN/2017

Date of order : *6 July* 2018

Present : **Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member**

- **Shri Y. Venkateswar Rao,
S/o Y. Dilli Rao,
R/o Dollygunj, Port Blair,
South Andaman, Pin : 744 102.**

---Applicant

-Versus-

1. **Union of India,
Service through the Secretary,
To the Govt. of India,
Ministry of Home Affairs,
New Delhi – 110 001.**
2. **The Chief Secretary,
A & N Administration,
Port Blair – 744 101.**
3. **The Director General of Police,
Andaman & Nicobar Islands,
Port Blair – 744 101.**
4. **The Superintendent of Police (HQ),
Andaman & Nicobar Islands,
Port Blair – 744 101.**

---Respondents

For the Applicant : **Mr. P.C. Das, Counsel
Ms. T. Maity, Counsel**

For the Respondents : **Mr. S.K. Ghosh, Counsel**

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ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

This instant Original Application has been filed seeking the following relief:-

"(A) A mandatory order directing the respondents authorities most particularly the respondent No. 4 to refund the sum so collected from the applicant after deducting two months basic pay as has been done in other police personnel in the interest of justice by setting aside and quashing the impugned memo dated 13.4.2017 and 17.4.2017.

(B) An order do issue directing the respondents to certify and transmit the record pertaining to the instant original application before this Hon'ble Tribunal so that conscientious justice can be rendered.

(C) Such other order or further orders direction or further directions as Your Lordships may deem fit and proper.

(D) Cost and incidentals thereto."

2. Heard Id. Counsel for the applicant and respondents, examined pleadings

and documents on record.

Although given liberty, the applicant waived his right to file rejoinder and pleadings were taken to be complete.

3. During hearing, Ld. Counsel for the applicant submitted as follows:-

That, the applicant had received an offer of appointment dated 2.8.2016 to the post of Constable (Executive) in Andaman & Nicobar Police and was subsequently so appointed vide Order Book No. 2402 dated 4.8.2016 in revised pay band PB-I Rs. 5200-20200 + G.P. Rs. 2000/-.

That, in the said offer of appointment and particularly in clause (xviii) of the same it was stipulated that he/she shall have to serve in the A&N Police at least for a period of three years and in case he/she quits, he/she will have to pay the training expenditure.

That, prior to his selection and appointment to the post of Constable (Executive) in the year 2014, the applicant had participated in the recruitment process to the post of Lower Division Clerk as conducted by the Staff Selection Commission and, having been duly qualified for the post, was issued an appointment letter vide order No. 685 dated 14.2.2017. Accordingly, the applicant

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tendered his resignation on 13.2.2017. On 16.2.2017, however, he was informed, by the respondent authorities that his resignation would be accepted only after depositing his salary and training expenditure and he was also directed to intimate the date from which his resignation will be accepted.

That, the applicant, vide his letter dated 22.2.2017, expressed his willingness to resign from the post of Police Constable with effect from 28.2.2017 and that he would like to discontinue his training w.e.f 1.3.2017. Thereafter, as directed vide memo dated 13.4.2017 and 17.4.2017, the applicant deposited the entire amount of training expenditure and salary to the Government exchequer which was acknowledged vide receipt No. 11966 dated 15.4.2017 and No. 11969 dated 17.4.2017 respectively.

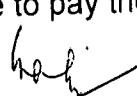
That, after depositing the amount as directed, the applicant represented to the respondent authorities that he had remitted the deposits under protest and that he should be relieved immediately from the post of Police Constable.

That, the applicant was finally relieved from Andaman & Nicobar Police Force with effect from 17.4.2017 (AN).

That, upon procuring documents obtained under RTI, the applicant came to know that the authorities had recovered only two months' salary under Clause 6.16 of the Andaman & Nicobar Police Manual from other police personnel who had tendered resignation in the post and in such cases the resignation has been accepted without recovering any training expenditure.

Hence, aggrieved at the discriminatory treatment, the applicant has filed the instant Original Application.

4. The respondents, who have filed their written statement, have argued to the contrary that the applicant was selected and offered appointment vide order dated 2.8.2016 to the post of Police Constable (Executive) and that in the said offer of appointment it had clearly been mentioned that the applicant had to serve in the A&N Police at least for a period of three years. In case he decided to quit, he would have to pay the training expenditure and that, having accepted the offer



of appointment, the applicant was issued his appointment letter in which there was a clear condition that stipulated, *inter alia*, that the applicant has to serve in the Andaman & Nicobar (Police) at least for a period of three years and upon his quitting the same he would have to pay the training expenditure as well as the salary paid during his service tenure.

That, the applicant had unconditionally reported for duty at the Police Training School on 8.8.2016 without objecting to any of the conditions stipulated in the said appointment letter.

That, on being selected to the post of Lower Grade Clerk in Andaman & Nicobar Administration, the applicant submitted his resignation and clarified that he wished to resign from service w.e.f. 28.2.2017. Upon receiving his intimation on resignation dated 13.2.2017, the applicant was issued a memo stating unambiguously that the resignation will be accepted on the condition of depositing the salary and training expenditure and their willingness to deposit the same should be given in writing. Thereafter, those who accepted such conditions and deposited the amount so directed to be deposited, were ultimately relieved w.e.f. 17.4.2017 (FN) vide Order Book No. 1310 dated 17.4.2017.

Hence, according to the respondents, as such directions had been issued strictly in terms of the appointment letter and willingness of the applicant as conveyed prior to being relieved from their post as Constable (Executive) in Andaman & Nicobar Police, the Original Application did not deserve consideration on merit.

ISSUE

5. To adjudicate on the relief claimed by the applicant, it is to be decided as to whether the amount directed to be deposited by the respondent authorities was issued in accordance with law.

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FINDINGS

6. At the outset, the offer of appointment issued to the applicant dated 2.8.2016 (Annexure A-1 to the O.A.) is examined in detail. The following two clauses as extracted therefrom deserve to be highlighted in this context:-

"XXXXXXX

(xiv) *In respect of all service matters he/she is governed by relevant rules and regulations in force from time to time. In case of any ambiguity or any matter not specifically provided for, the decision of the Director General of Police, A&N Islands shall be final.*

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(xviii) *He/She has to serve in the A&N Police at least for a period of three years. In case, he/she quits, he/she will have to pay training expenditure."*

The applicant accepted the offer of appointment vide his communication dated 2.8.2016 as follows:-

"To

*The Dy. Superintendent of Police (HQ),
Police Headquarters,
Port Blair.*

Sub:- Acceptance of offer of appointment – reg.

Sir,

With reference to your good office offer of appointment letter vide No. DGP/Rec. cell/SO/PC(Exe.)/2015/4021 dated 02/08/2016, I do hereby accept your offer of appointment on the post of Constable (Exe.) in Andaman & Nicobar Police.

Thanking you,

Yours faithfully,

Dated: 2.8.2016

*(Y. Venkateswar Rao)
S/o. Y. Dilli Rao"*

From the above, it is clear that the applicant had accepted the terms and conditions of the offer letter upon his unconditional acceptance.



The next document that calls for an examination is Order Book No. 2402 dated 4.8.2016 (Annexure "R-3" to the Reply) wherein Clause VI of the terms and conditions for appointment has been mentioned as below:-

"VI. He/She has to serve in Andaman and Nicobar Police (Executive Branch) at least for a period of three years. In case, he/she quits he/she will have to pay training expenditure as well as salary paid during this tenure."

The respondents, both in their written statement as well as during oral arguments, were not able to explain as to under which Rules refund of tenure salary was included as a condition in the applicant's appointment letter. We, therefore, referred to the A&N Police Manual 1963 (As amended upto 1984) which is reproduced below:-

"6.16 Resignation: (a) The resignation of a police officer of any particular rank can only be accepted by the officer empowered to appoint him. Ordinarily, a police officer who has agreed to serve for specified period should not be permitted to resign within that period. A directly appointed upper subordinate whose appointment involves training at a Police Training College, shall not be permitted to resign within three years of the date of his appointment.

(b) Police Officer who intends to resign shall give notice to that effect in writing and will not ordinarily be permitted to withdraw himself from duty until two months have elapsed from the date on which his resignation was tendered. If however the reasons given for wishing to resign are pressing, the officer empowered to accept the resignation may waive the period of two months either in part or in whole and may require the resigning officer to credit to Government in lieu of notice a sum equivalent to the pay he would have drawn during the period of notice waived."

Clause 6.16 (b) categorically states that if the reasons for wishing to resign are pressing, the officer empowered to accept the resignation may waive the requisite period of two months either in part or in whole and require the resigning officer to credit to Government in lieu a sum equivalent to the pay that he would have drawn during the period of notice so waived.

In the offer of appointment (Annexure "A-1" to the O.A.), clause xiv mandates that in respect of all service matters the applicant will be governed by the relevant rules and regulations in force from time to time. While the A&N Police Manual 1963 (as amended) was clearly enforceable in case of the applicant, respondents have not furnished any other documents to prove that on

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account of resignation prior to the stipulated period of three years, the entire tenure salary would have to be returned to Police Administration. There are no Rules on record regarding resignation during probation although respondents have challenged the applicability of clause 6.16 to the applicant in their pleadings. What is on record, however, are the provisions of clause 6.16 of the Police Manual which makes it clear that if the requisite notice period of two months is waived, two months' salary would have to be deposited equivalent to the salary was being drawn during the period of waiver of notice. The applicant admittedly intended to resign on 28.2.2017 (Annexure "A-5" to the O.A.) and he was relieved on 17.4.2017 (Annexure "R-9" to the reply). As this period is less than that of two months, rightfully the respondent authorities can claim that two months' salary in lieu will have to be deposited to the State Exchequer. The refund of training expenditure is also not in dispute in the instant Original Application, having been incorporated in the offer letter at clause xviii of the same.

The letter of appointment dated 2.8.2016 constituted the offer made by the respondent authorities to the applicant, who was the prospective employee and the assent to that offer as made by the applicant in "R-2" to reply signifies the acceptance of the applicant.

In **A.K. Kenial v. UCO Bank, 1993 Lab IC 1800 (Bom)** the Hon'ble Apex Court has held that where the rules provide that the employer might refuse to accept resignation in certain circumstances and if such circumstances exist the employer is not bound to accept the offer of resignation. Hence, the respondent authorities were again well within their rights when they directed the applicant to deposit the amount spent on training expenditure and salary prior to accepting his resignation from the post.

Where the respondents have erred, however, is in claiming the refund of the tenure salary without any provision of supporting rules or regulations in this regard. The respondents, during their oral submissions as well as in their

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pleadings has not been able to substantiate that there are any rules for confiscation of the salary earned during the entire service tenure of the employee during probation and in the absence of any regulations or statute, we are constrained to conclude that recovery of salary for the entire tenure of service is not in accordance with law.

7. Accordingly, we direct that the respondents will refund to the applicant that part of the salary which is not supported by provisions of clause 6.16 of the A&N Police Manual, 1963 (as amended) and also clause xiv and xviii of the offer letter. It is a settled principle of law that when a condition has not been incorporated in the offer letter, it cannot be incorporated at the stage of issue of formal appointment after acceptance of the offer by the prospective employee. While it is a fact that the applicant had joined unconditionally without objecting to clause VI of his appointment letter, the onus also lies on the respondents to ensure that such appointment letters are issued in accordance with law. Since the respondents have not been able to provide any documents/rules/policy/statutes which substantiates the legality of clause VI of the appointment letter dated 4.8.2016 (Annexure R-3 to the reply) the recovery order dated 13.4.2017 (Annexure R-7 to the reply) as far as the tenure salary is concerned deserves to be modified and the respondents are directed to ensure the same.

8. Hence, the O.A. succeeds. There will be no order as to costs.

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(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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