

OA.No.170/01871/2018/CAT/BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01871/2018

DATED THIS THE 04TH DAY OF SEPTEMBER, 2019

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI C.V. SANKAR, MEMBER (A)

Charumohanan A
Aged 41 years
(S/o Sri A. Ayyappan)
R/o House No. 7/4, Suryanagari,
Stage II, Near Preeti Hotel,
Sulla Road, Shanti Nagar,
Hubli 580 023
(By Advocate Shri C.C. Thomas)

..... Applicant

Vs.

1. The General Manager
South Western Railway
Gadag Road,
P.O: Hubli 580 023

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2. Chief Personnel Officer
O/o The General Manager
South Western Railway
Gadag Road,
P.O: Hubli 580 020

3. Sr. Divisional Personnel Officer,
O/o Divisional Railway Manager,
Keshwapur
P.O: Hubli 580 020

4. Sr. Divisional Operating Manager,
O/o Divisional Railway Manager,
Keshwapur
P.O: Hubli 580 020

5. Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishyanidhi Bhavan, Aland Road,
Gulbarga 585 101

6. The Asst. Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishyanidhi Bhavan, Aland Road,
Gulbarga 585 101

....Respondents

(By Shri N. Amaresh, Counsel for Respondents No. 1 to 4 &
Shri P. Saravana, Counsel for Respondents No. 5 & 6)

O R D E R (ORAL)

(HON'BLE DR. K.B. SURESH, MEMBER (J))

Heard. We had at the admission stage itself, i.e., on 19.12.2018
passed the following order:

"We heard the matter today and had a detailed discussion with the learned counsel. We do not think that this is a case which call for an interim order for the same reason that under the law of election when a person chooses it is his responsibility to abide by his choice. By abiding by his choice he cannot make a prejudice on the other side because it is covered by a sanctified contract, or to explain it a little more, a contract uberrimae fidei, i.e., a contract of utmost faith. Two elements lie in it. One is that the prejudice to the employer which had selected a person hoping to recover employment and failing to do so.

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The second element is that another rightful person could have been selected in that post and a livelihood was lost by such a person which is now unrecoverable. The applicant relies on a Railway Board circular which indicate that in certain circumstances when a person's continued employment in the governance system can be ensured such training cost need not be recovered. Applicant relies on Mahendran's judgment in which we had passed an order in the particular circumstances of that case that since the Railway Board had selected a person for two posts within the same structure and he is going only from one branch of Railway to another branch we held that no substantial prejudice has resulted against Railways and therefore did not permit recouping of training expenses. This we find is fundamentally different as applicant will be rejoining his earlier department which, even though is coming under the governance system, is absolutely different in content and greater public interest as well. But since an issue has now been raised, we will issue notice by dasti to the respondents and direct the respondents to file a reply within four weeks. Two weeks for rejoinder. Post for hearing on 26.02.2019."

2. Now the learned counsel relies on IREM Vol. I, Chapter XIV - Para 1410 which we quote:

"1410. Refund of cost of training and enforcement of bond-money in respect of railway employees who secured employment elsewhere on the basis of their duly forwarded applications.

(i) Non-gazetted Railway employees who have received training at Railway expense whether in the form of an 'induction training' or in a specific avocation may be exempted from refunding the cost of training in the event of their selection to other posts under the Central or State Govt. or in Public Sector undertaking / Autonomous Bodies wholly or substantially owned/financed/controlled by the Central Government or a State Govt. However, a fresh bond should be taken from such employees to ensure that they serve the new employer for the balance of the original bond period. The Railway Administration with whom the employee has executed the original bond, may at the time of forwarding of his application (and if it is not possible, before his release) for another post, may write to the department/organization under whom the employee intends to take up another appointment, intimating them about the bond obligation of the individual and clarifying that in the event of his selection for the new post, his release will be subject to the condition that the new department/organization obtains from him a fresh bond binding him to serve them for the balance of the original bond period and in case he fails to serve the new department/organization, or leaves it before completion of the original bond period, for a job, where exemption from bond obligation is not available. The proportionate bond money should

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be realized from the individual and refunded to the Railway Administration, with whom he had originally executed a bond. The Ministry/Department/Organization where the person a newly employed, should also duly intimate the original Ministry/Department/Organization, the fact of a fresh bond having been executed by the person concerned.

(Authority Board's letter No. E(NG) I-89/AP/5 dated 25-6-98)

(ii) Exemption from recovery of the training expenses in terms of this para includes payments made to an individual in the shape of training allowance or stipend. The instructions are not restrictive but cover all aspects of training including Apprenticeship. It is also clarified that exemption from recovery of expenses applies to all types of expenditure direct or indirect including payments made as training allowance or stipend.

(iii) These instructions also apply to cases where a railway employee has been selected for a post/service (other than Private employment) for which he had applied before joining the Railway, with whom he had executed a bond.

[E(NG) II/77/AP/6 dated 9-2-1979 & E(NG)I/84/AP/9 dated 11-4-1986].

(iv) Provision contained in the above para are applicable to all the railway employees including gazette officers, probationers and special class railway Apprentices during apprenticeship training, probationary period and also where they are occupying working post.

(Authority: Ministry of Railway's letter No. E(NG)I-89/AP/5 dated 12.12.2007)

[E(NG) II/79/AP/9 dated 3-7-79]."

3. We had gone carefully through it. It seems to be closely allied with apprenticeship for which a statutory provision is available. There seems to be a distinct difference between the situation as postulated in IREM Para 1410 and this case. But at the same time we hasten to add that Railways cannot take such an economically unviable decision without statutory provision for it. It is for the very simple reason that they cannot decide to write off their losses without adequate reason. No reason seems to be forthcoming on this issue. Therefore, we will, utilizing our visitorial responsibility, quash Para 1410 of IREM as it is squarely outside the powers and responsibility of the Railway Board to do so. It is *ultra vires* the

constitutional compulsions of responsibility of public bodies to act equitably and with accountability and responsibility.

4. Applicant on his own volition while he was working in a government department had chosen to join the railways as an ASM. It is mandatory under the rules for an ASM to have specific job induction training and the railways at their cost had done so. Now the Railways has asked for the cost of said training as applicant has, after completion of this training, expressed his desire to rejoin his earlier department where his lien is pending. This is substantially different from a case wherein a lien was pending for a government employee who came on deputation and goes back. While doing so he does not incur any special cost or responsibility on the new employer but here the applicant had induced the railways by his desire to serve them to give him training and, as a result, made the railways to suffer losses. Therefore, the claim made by the railways to recoup such loss is reasonable, just, legal and proper.

5. We also think that a degree of frivolity has crept into the proceedings. Applicant should not have acted in such a manner as he had also deprived another person of getting this employment and secured his livelihood. It is in violation of Article 36 to 38 of Constitution of India which declares that every person is eligible to have reasonable livelihood. By this action applicant has snatched away livelihood of another deserving person. Therefore, we find that a degree of frivolity is attached to this case. Therefore, we have discussed with the learned counsels and other counsels at the bar and

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found that the training period is roughly 5 months and 65 people are attending each batch. Therefore, it is stipulated that the recovery of Rs. 1,75,000/- may not be very relevant to the actual cost incurred. Therefore, applicant is liable to pay the agreed cost to the railways but then as a special case we will permit him to have one month time to make this payment.

6. At this point of time Shri C.C. Thomas, learned counsel for the applicant, on behalf of his client submits that in view of the fact that 65 people were trained along with him for about 5 months and on a reasonable reduction and comparison of amount paid he may be allowed to pay 50% of the amount claimed by the railways. We will quantify it as Rs. 85,000/-, after discussion at the bar, as the amount to be paid as cost from the applicant to the railways within the next one month. If he does not pay within the next one month, then he has to pay the entire amount.

7. The OA is disposed as above. No order as to costs.

(C.V. SANKAR)

MEMBER (A)

(DR.K.B.SURESH)

MEMBER (J)

Annexures referred to by the applicant in OA No. 170/01871/2018

- Annexure A1: Copy of the NOC dated 31.07.2013
- Annexure A2: Copy of the relieving order dated 20.10.2014
- Annexure A3: Copy of the resignation letter dated 12.08.2015
- Annexure A4: Copy of the letter dated 11.08.2017
- Annexure A5: Copy of the representation dated 24.08.2017
- Annexure A6: Copy of the representation dated 18.10.2017
- Annexure A7: Copy of the office order accepting the applicant's resignation
- Annexure A8: Copy of the letter dated 18.10.2017
- Annexure A9: Copy of the letter dated 22.01.2018
- Annexure A10: Copy of the letter dated 26.02.2018
- Annexure A11: Copy of the letter dated 29.03.2018
- Annexure A12: Copy of the note dated 13.04.2018
- Annexure A13: Copy of the letter dated 04.05.2018
- Annexure A14: Copy of the applicant's reply dated 28.05.2018
- Annexure A15: Copy of the SDPO reminder to PF Commissioner
- Annexure A16: Copy of the letter dated 24.04.2018
- Annexure A17: Copy of the order dated 12.08.2015

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