(2019) 09 CAL CK 0147

In the Calcutta High Court

Case No : Wp. Central Tribunal (WPCT) No. 32 Of 2019

Medha Moitra APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Indian Contract Act, 1872 — Section 23
Constitution Of India, 1950 — Article 12, 14, 16

Citation : (2019) 09 CAL CK 0147

Hon'ble Judges : Dipankar Datta, J;Saugata Bhattacharyya, J

Bench : Division Bench

Advocate : Phatick Chandra Das, Anirudha Mohanta, Santanu Chatterjee.

Final Decision : Allowed

Judgement

Saugata Bhattacharyya, J

1. This writ petition is directed against an order dated January 10, 2018 passed by the Central Administrative Tribunal, Calcutta Bench (hereinafter the tribunal) dismissing the original application of the writ petitioner herein, numbered as O.A. 350/1403/2016.

2. The petitioner was appointed on the post of Accounts Clerk in the South Eastern Railway against the quota meant for qualified sportspersons through talent scouting vide appointment letter dated July 3, 2013 upon acknowledging the skill of the petitioner as a table tennis player. She was placed in the Pay Band of Rs. 5200/- + Grade Pay 1900/-. At the time of appointment of the petitioner in the South Eastern Railway, she had to furnish a bond in the prescribed proforma in terms of paragraph 8.4 of the instructions issued by the Government of India, Ministry of Railways vide RBE No-189(B)/2010 dated New Delhi, December 31, 2010. The relevant portions of the said bond furnished by the petitioner while joining the post of Accounts Clerk, heavily relied upon by the learned advocate for the respondents, will be discussed later on.

3. The petitioner discharged her duty as Accounts Clerk in the South Eastern Railway from July 2013 till April 29, 2016. Meanwhile, she was selected for the post of Tax Assistant in the Income Tax Department, Kolkata under The Department of Revenue, Government of India with a Grade Pay of Rs. 2400/- which was higher in comparison to the grade pay which the petitioner was receiving while discharging her duty as Accounts Clerk in the South Eastern Railway. Consequently, vide her letter dated November 30, 2015, the petitioner approached the President, Kharagpur Sports Association, South Eastern Railway, expressing willingness to tender her resignation from the post of Accounts Clerk with effect from December 1, 2015. Soon thereafter, the petitioner made another communication dated March 4, 2016 to the concerned authority of the South Eastern Railway for acceptance of her resignation, to facilitate her to join the post of Tax Assistant in the Department of Revenue, Government of India.

4. Upon receipt of the letters from the petitioner seeking acceptance of her resignation, the respondent authority first issued a letter dated December 11, 2015 intimating that the competent authority did not agree to accept such resignation. Subsequently, while referring to the letter of the petitioner dated November 30, 2015, the Senior Assistant Financial Advisor (Co-ord), Kharagpur Workshop forwarded a letter dated April 26, 2016 to the petitioner asking her to deposit an amount of Rs. 9,60,891/- (Rupees nine lakhs sixty thousand eight hundred ninety one only) for not complying with the bond she had furnished while joining the post of Accounts Clerk in the South Eastern Railway. To substantiate the demand of the respondent authority to deposit Rs. 9,60,891/-, a tabular breakup was provided in the said letter dated April 26, 2016 which is reproduced below :-

Period

Placing of Posting

Vetted Amount (Rs)

Remarks

17-07-13 (DOA) to 30-06-14

W/S Accounts, Office, KGP

1,80,000

Assessed by HQ/GRC

01-07-14 to 29-02-16

ASO/SER/GRC

3,10,004

Assessed by HQ/GRC

01-03-16 to 16-07-18

....

4,70,887

Anticipated amount, assessed by HQ/GRC, based on present pay for the rest period of Service bond

Grand Total: Rs

9,60,891

5. The petitioner upon receipt of the said communication dated April 26, 2016 paid Rs. 9,60,891/- by demand draft drawn on United Bank of India, Sarsuna College Branch, dated April 26, 2016,in lieu thereof the concerned respondent authority issued a money receipt dated April 28, 2016 in her favour. Thereafter, the Senior Assistant Financial Advisor (Co-ord), Kharagpur Workshop, by issuing a letter dated April 29, 2016 accepted the resignation of the petitioner with effect from February 29, 2016.

6. Subsequently the petitioner made one comprehensive representation on August 12, 2016 addressed to the concerned respondent authority questioning the arbitrary demand and acceptance of Rs.9,60,891/- from her while accepting her resignation. Upon receipt of such representation dated August 12, 2016, the concerned respondent authority asked the petitioner, vide a notice dated August 18, 2016, to appear before him on August 30, 2016 but in the said notice the exact time was not specified. It has been alleged by the petitioner that she went to the office of the respondent authority on August 30, 2016 as per notice dated August 18, 2016 but she was not heard by the authority, which led her to submit written notes of argument and in this regard she submitted a letter dated August 30, 2016 before the respondent authority. However, the respondent authority by issuing a letter dated September 01, 2016 disputed the contention of the petitioner as contained in her letter dated August 30, 2016, and thereby informed the petitioner that she was not interested to attend the personal hearing and deprecated the conduct of the petitioner on August 30, 2016.

7. The petitioner preferred the original application before the tribunal throwing a challenge to the letters dated April 26, 2016 and September1,2016, both issued by the Senior Assistant Financial Advisor (Co-ord), Kharagpur Workshop, being the respondent no. 2 in this writ petition. In the said original application, inter alia, she sought for relief which reads infra:

"a) Direction do issue quashing the order dated 26.04.2016 issued under the signature of the Senior Assistant Financial Advisor (Co-ord), Kharagpur Workshop being Annexure "A-5" hereto and further to command them to act and proceed strictly in accordance with law;

b) Direction do issue quashing the Memo dated 01.09.2016 issued under the signature of the Senior Assistant Financial Advisor (Co-ord), Kharagpur Workshop being Annexure "A-11" hereto and further to command them to act and proceed strictly in accordance with law;

c) Direction do issue directing the respondents and their men and/or agents to refund the amount of Rs. 9,60,891/- along with interest @18 % p.a. as deposited by the applicant vide challan dated 26.04.2016 being Annexure "A-6" hereto and further to command them to act and proceed strictly in accordance with law;

d) Direction do issue directing the respondents and their men and/or agents to refund the amount of Rs. 9,60,891/- along with interest @18% p.a. as deposited by the applicant vide challan dated 26.04.2016 being Annexure -"A-6" pending disposal of the instant application;"

As noted above, the original application stood dismissed giving rise to this writ petition.

8. The respondent authorities attempted to refute the contentions of the petitioner by placing reliance upon the instructions issued by the Executive Director, Estt. (Sports) contained in RBE No. 189(B)/2010 dated New Delhi, December 31, 2010, specially paragraphs 8.4 and 8.5 therein quoted below:

"8.4 "Service Bond'' for persons recruited against Sports Quota:

The "Service Bond'' period for the persons recruited against sports quota shall be of 5 years. At the time of his/her appointment, the sportsperson shall fill and sign the Bond, in the format attached at Annexure-IV.

8.5 The "Offer of appointment'' for recruitment against sports quota shall be issued as per the format prescribed at Annexure-V."

9. The main plank of argument advanced on behalf of the respondent authorities upon laying stress on paragraphs 8.4 and 8.5 of the instructions contained in the circular dated December 31, 2010 was founded on submission of service bond by the petitioner while joining the post of Accounts Clerk in the South Eastern Railway in the format as prescribed under Annexure-IV as well as acceptance of offer of appointment against sports quota under Annexure-V.

The format of the Service Bond as per Annexure-IV and the format of appointment orders for recruitment against sports quota as per Annexure-V are reproduced below:

ANNEXURE-IV

(for Para 8.4)

FORMAT FOR SERVICE BOND

FOR THE PERSONS RECRUITED AGAINST SPORTS QUOTA

An agreement is made on this .... day of 20....

Between .... son/daughter of .... residing at .... (hereinafter called the Employee) of the first part and the President of India acting through the .... of the Railway Administration (hereinafter called the Government) of the second part.

WHEREAS the employee has submitted an application for appointment as .... In .... claiming that he is proficient in the game of ....

AND WHEREAS the Government has agreed to appoint the employee as .... in .... On "Sports Account" under the special powers vested in the Government without the adoption of the normal mode of recruitment through the Railway Service Commission

AND WHEREAS the Employee has agreed to abide by all the terms and conditions set-forth hereunder in consideration of the Government having agreed to appoint him as .... under Sports Account without subjecting him to the usual mode of recruitment through Railway Service Commission.

NOW THESE PRESENTS WITNESSETH and the parties hereto respectively agree as follows:-

(1) That, the employee hereby binds himself to serve the Government as .... In any place situated on .... Railway for a period of five years commencing from the .... day of ....20.......

(2) That, the employee shall be governed by all the rules and regulations issued from time to time by the Ministry of Railways and the G.M. of the .... Governing the conditions of services of the Railway employees.

(3) That, the Employee shall serve the Administration honestly, efficiently and diligently by not only discharging the official duties entrusted to him as .... but also by participating in all the sports activities for which he/she has been appointed whenever called upon to do so by the Government and that he/she shall not participate in sports activities other than those of the Government without previous sanction of the Government.

(4) That, the employee shall not without valid reasons fail to take part in the respective sports activities.

(5) That, in case if infringement/violation of any of the above conditions by the Employees, he/she shall pay to the Government of an amount of Rs. .... (equivalent to the salary payable for the period of five years, i.e. bond period) and that his/her services shall be terminated on one month's notice.

(6) Subject to terms and conditions stipulated herein the Employee shall be governed by all the rules and regulations and orders issued from time to time governing the conditions of services of Railway employees.

IN WITNESS WHEREOF the parties hereto have set their hands and seals on the .... day on ....20.....

ANNEXURE-V

(for Para 8.5)

FORMAT FOR APOINTMENT ORDERS

FOR RECRUITMENT OF SPORTSPERSONS AGAINST SPORTS QUOTA

File. No. ....

Date:.....................

OFFER OF APPOINTMENT

Sub:- Recruitment of .... (name of sportsperson), ... (game) as .... (name of post), against sports quota, through Talent Scouting/ Open Advertisement

Shri/Smt./Km .... (name of sportsperson), (game) is hereby offered the appointment in .... Railway, against sports quota through Talent

Scouting/Open Advertisement, to the post of .... (name of post), in Pay Band Rs............ + Grade Pay Rs............ In PB ....(1 or 2), with normal fixation of pay; after the approval of the Competent Authority.

2. The particulars of Shri/Smt./Km. ...., as per information and documents furnished by him/her, are as under:-

(i) Name(as per educational qualification certificates):

(ii) Father's Name :

(iii) Date of Birth (as per Matriculation certificate) :

(iv) Educational Qualification :

(v) Recognized Sports Achievement(s) as per norms :

(vi) Community (SC/ST/OBC/General) :

(vii) Permanent Address :

(viii) Present postal Address :

3. Appointment to Shri/Smt./Km. .... (name of sportsperson) is being offered on the following terms and conditions:-

(i) He/She shall execute the Service Bond in the prescribed proforma, to serve the Railway at least for five years.

(ii) He/She shall be on probation for a period of two years. If, his/her performance in the field of sports during probation period is found unsatisfactory, his/her services are liable to be terminated.

(iii) He/ She should acquire the minimum educational qualification i.e ...., within four years from the date of his/her appointment, failing which his/her services are liable to be terminated. (Para applicable in case of sportsperson recruited after relaxation in minimum educational qualification by Railway Board).

(iv) His/her request shall not be considered for transfer to any other Railway/ Division, before completion of ten years' service.

(v) In addition to above, he/she shall be governed with the all other rules and regulations stipulated for Railway employees from time to time.

(vi) He/ She shall be terminated from service; if the information and documents furnished by him/her for said recruitment are found incorrect/fake; at any stage.

Signature of Signing Authority

(Name & Designation of Signing Authority)

Copy to:- (i) The Candidate

(ii) ED/E(Sports), Railway Board, 452 Rail Bhavan, New Delhi-110001; and

(iii) All other concerned Officers/Offices of the Railway.

10. The learned advocate for the respondent authorities argued that since the petitioner while accepting the appointment on the post of Accounts Clerk in the South Eastern Railway submitted the service bond and accepted the offer of appointment under Annexure-IV and Annexure-V, respectively, in terms of paragraphs 8.4 and 8.5 of the instructions dated December 31, 2010, the demand of the respondent no. 2 vide order dated April 26, 2016 thereby asking the petitioner to deposit Rs. 9,60,891/- on account of infringement/violation of the conditions of the service bond is justified and there was no arbitrariness and illegality in the act and actions of the respondent authorities insisting upon the petitioner to pay the said amount as a pre-condition for acceptance of her resignation.

11. Argument was also advanced on behalf of the respondent authorities that the South Eastern Railway had to spend sufficient fund for training of the petitioner as a table tennis player upon providing necessary infrastructure and coach for making her better prepared for participating in the tournaments on behalf of Indian Railway/South Eastern Railway. This Court, on finding that this argument was not advanced before the tribunal, granted the respondent authorities liberty to affirm an affidavit disclosing the expenditure made by them for training of the petitioner for the period, she remained in service under the South Eastern Railway. The affidavit sworn by the Assistant Financial Advisor (Co-ord) W.S, South Eastern Railway, Kharagpur, being the respondent no. 2, contains pleadings disclosing the expenditure made by the railway authorities for the table

tennis team of five members including one coach. In a tabular form, breakup of the expenditure was provided, which is Annexure R-1, at page 16 of the said affidavit. On perusal of the details of the expenditure, it appears that the concerned authority calculated Rs. 5,81,000/- being the total expenditure for a year for the petitioner inclusive of her salary for one year. The projected expenditure in tabular form for the training of the petitioner as appended to the said affidavit is reproduced below:

Sl

Details of expenditure

Amount (Rs.)

Remarks, if any

01.

Total salary (for one year)

1,80,000

Approx

02.

Inter Rly. Expenditure (per year) for 5 (4+1) players.

31,000

approx.

03.

Infrastructure expenses (Yearly):-

(i) Table Tennis Board and balls etc.

60,000

approx

(ii) Indoor Court

50,000

approx.

(iii) Attendant charges

60,000

Approx

(iv) Electric charges (with AC)

20,000

approx.

(V) Expenses for Coaches(Salary)

1,80,000

approx.

TOTAL=

5,81,000

12. In reply to the affidavit-in-opposition sworn on behalf of the respondent authorities the petitioner in her reply affidavit specifically averred that the expenditure which was indicated in the affidavit-in-opposition was for the entire team and erroneously the salary component was also included in the said statement of expenditure which made the quantum of expenditure an inflated one in order to justify the capricious demand of the respondent authorities to make payment of Rs.9,60,891/- prior to acceptance of the resignation of the petitioner.

13. Court's View:

Upon considering the rival contentions of the parties, the following questions arise for adjudication-

(i) Whether the respondent authorities were justified in laying a demand of Rs.9,60,891 as the precondition for accepting the resignation of the petitioner on the plea of infringement/violation of the conditions of service bond which she had to furnish at the time of joining the post of Accounts Clerk?

(ii) what is the extent of expenditure incurred by the respondent authorities for the training of the petitioner for the period while she was in service under the South Eastern Railway? and

(iii) in the event this Court comes to a finding that the demand for depositing Rs.9,60,891/- or any part of the said amount is unjustified, whether the petitioner is entitled to refund along with interest thereon?

14. While answering question no. (i) as formulated above, this Court is not oblivious of the fact of execution of the bond by the petitioner in terms of paragraph 8.4 of the instructions contained in the Government Order dated New Delhi, December 31, 2010 following the format appended under Annexure-IV as well as acceptance of appointment order in terms of the format under Annexure-V. Both the formats under Annexure-IV and Annexure-V have been set out above. On careful scrutiny of the service bond in terms of Annexure-IV furnished by the petitioner on July 17, 2013, the first covenant agreed upon by the petitioner reads as follows -

"NOW THESE PRESENTS WITNESSETH and the parties hereto respectively agree as follows:-

(1) That, the employee hereby binds himself to serve the Government as Gr. C G.P- 1900/- In any place situated on (sic) within S.E. Railway for a period of five years commencing from the 17th day of July 2013."

Similarly, it transpires that as per the format contained in Annexure-V, the petitioner accepted the appointment letter on terms and conditions, the first one of which is set out below:-

"3. Appointment of Shri/Smt/Km. MEDHA MOITRA (name of sportsperson) is being offered on the following terms and conditions:

(i) He/She shall execute the Service Bond in the prescribed proforma to serve the Railways at least for five years."

15. Therefore, the first covenant of the service bond (Annexure - IV) which the petitioner had to furnish at the time of her appointment binds her to serve the Government (emphasis supplied) for a period of five years. The first condition under paragraph 3 as contained in the format of appointment order, Annexure-V, prescribes execution of service bond in the prescribed proforma to serve the Railways at least for five years, albeit proforma service bond contemplates serving the Government. In the present case, the petitioner served as an Accounts Clerk for the period from July 17, 2013 till February 29, 2016 (date of acceptance of resignation) and thereafter joined the post of a Tax Assistant in the Income Tax Department, Kolkata and has been discharging her duty in such department continuously. In consideration of the posts manned by the petitioner first as an Accounts Clerk in the South Eastern Railway and thereafter as a Tax Assistant in the Income Tax Department, it is discernible that both the posts, held by the petitioner, are in two different departments of the Central Government. Since, the petitioner joined the post of Tax Assistant in the Department of Revenue and not in any organization, which is not under the direct control of the Central Government, it can well be inferred that there was substantial compliance of the first covenant of the bond furnished by the petitioner at the time of her appointment as an Accounts Clerk in the South Eastern Railway. In both the assignments first as an Accounts Clerk in the South Eastern Railway and subsequently as a Tax Assistant in the Department of Revenue, the petitioner has been provided the opportunity to serve the Government i.e, the Central Government.

16. During the course of hearing, paragraph 11.3 of Master Circular No. 44 applicable to Railway employees was brought to our notice. Paragraph 11.3 of the said master circular reads infra:-

"11.3 In the case of Railway employees who have received induction training and who leave Railway service with prior proper permission of the competent authority to join another Central Government department, State Governments, Public Sector undertakings wholly owned or partially owned by the Central/State Governments, or an autonomous body wholly or substantially owned/financed/ controlled by the Central Government or State Government, but before the expiry of the bond period, they should execute a fresh bond with the new employer to the effect that they would serve their new employer to the extent of unexpired portion of the bond period and that in the event of their failure to serve the balance bond period with their new employer, the bond money will be recovered from them by their new employer and credited to the Railways before they are allowed to quit their service."

Said paragraph 11.3 of the Master Circular No. 44 provides opportunity to the Railway employees after receiving apprentice/initial/probationary training from various Railway/outside institutions in the country to leave/resign from Railway service in spite of furnishing bond for serving the Railway authority for a specified period to join another Central Government Department, State Governments, Public Sector Undertakings wholly owned or partially owned by the Central/State Government or an Autonomous Body wholly or partially owned/ financed/controlled by the Central Government or the State Government before the expiry of the bond period on the condition to execute a fresh bond with the new employer for the remaining period of bond thereby facilitating those employees to serve the new employer and at the same time the conditions of the bond can be fulfilled without deduction or recovery of bond money from the salary of those trained employees.

17. Paragraph 11.3 of Master Circular No. 44 sounds reasonable and convincing, which does not place the employee of the Railway into any disadvantage due to execution of the service bond.

To obviate the rigor of the bond condition as per Annexure-IV appended to the Government instructions dated December 31, 2010 which the petitioner had to furnish while joining the post of Accounts Clerk in the South Eastern Railway, the first covenant of the said service bond applicable to the petitioner(recruited against sports quota) warrants liberal interpretation upon taking note of paragraph 11.3 of Master Circular No. 44, which is applicable to Railway staff who are provided training likewise the petitioner upon being recruited against sports quota, or else she would be subjected to gross injustice albeit till date, upon tendering resignation, she has been serving the Central Government as a Tax Assistant in the Income Tax Department. The interpretation of the first covenant of the service bond as per Annexure-IV read with paragraph 8.4 of the instructions contained in Government order dated December 31, 2010 as made by the respondent authorities in the case of the petitioner led to their asking the petitioner to deposit Rs. 9,60,891/- by issuing the impugned order dated April 26, 2010, which offends the right guaranteed to the citizens of India under Article 14 and Article 16 of the Constitution of India.

18. If the issue as per question no.(i) is appraised in terms of pecuniary loss incurred by the respondent authorities due to making provisions for training in the particular discipline of sports to the petitioner would unleash absurd and inconvenient situation. The logic behind the demand of Rs. 9,60,891/- from the petitioner in compliance with the service bond is to reimburse the South Eastern

Railway the expenditure which it had made to train the petitioner. Unfortunately, before laying such arbitrary and illogical demand by the respondent authorities it ought to have been taken into consideration that the petitioner on tendering resignation from South Eastern Railway would join as a Tax Assistant in the Department of Revenue under the Central Government, thereby the skill of the petitioner as a table tennis player which was nurtured and might have improved during her tenure in the South Eastern Railway could also well be utilized by the Revenue Department of the Central Government in the sports arena. Keeping in mind the broader perspective there was at least no pecuniary loss suffered by the Central Government upon providing training to the petitioner as a table tennis player.

19. Since, during the course of argument, heavy reliance was placed on the service bond executed by the petitioner while entering in the service of the South Eastern Railway, we hasten to emphasize on paragraphs 101 & 111 of the judgement delivered by the Apex Court reported in (1986) 3 SCC 156 (Central Inland Water Transport Corporation Limited & Another v. Brojo Nath Ganguly & Another) which runs as follows:-

"101. It was, however, submitted on behalf of the appellants that this was a contract entered into by the corporation like any other contract entered into by it in the course of its trading activities and the court, therefore, ought not to interfere with it. It is not possible for us to equate employees with goods which can be bought and sold. It is equally not possible for us to equate a contract of employment with a mercantile transaction between two businessmen and much less to do so when the contract of employment is between a powerful employer and a weak employee.

111. The Calcutta High Court was, therefore, right in quashing the impugned orders dated February 26, 1983, terminating the services of the contesting respondents and directing the Corporation to reinstate them and to pay them all arrears of salary. The High Court was, however, not right in declaring clause (i) of Rule 9 in its entirety as ultra vires Article 14 of the Constitution and in striking down as being void the whole of that clause. What the Calcutta High Court overlooked was that Rule 9 also confers upon a permanent employee the right to resign from the service of the Corporation. By entering into a contract of employment a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign. A resignation by an employee would, however, normally require to be accepted by the employer in order to be effective. It can be that in certain circumstances an employer would be justified in refusing to accept the employee's resignation as, for instance, when an employee wants to leave in the middle of a work which is urgent or important and for the completion of which his presence and participation are necessary. An employer can also refuse to accept the resignation when there is a disciplinary inquiry pending against the employee. In such a case, to permit an employee to resign would be to allow him to go away from the service and escape the

consequences of an adverse finding against him in such an inquiry. There can also be other grounds on which an employer would be justified in not accepting the resignation of an employee. The Corporation ought to make suitable provisions in that behalf in the said Rules. Therefore, while the judgement of the High Court requires to be confirmed, the declaration given by it requires to be suitably modified."

20. We are not unmindful of the nature of contract/bond entered into between the petitioner and the respondents. By submitting the bond dated July 17, 2013, which can be termed as a contract between the lion and a lamb, liberal interpretation of the terms and conditions of the said bond in favour of the petitioner is warranted. At the same time, placing reliance on paragraph 111 of the judgement of the Apex Court quoted above, we observe that by furnishing bond the petitioner cannot be reduced to be a slave not even having the right to resign from the post of Accounts Clerk in the South Eastern Railway. The demand of Rs. 9,60,891/- upon issuing the impugned order dated April 26, 2016 for accepting resignation of the petitioner is in the teeth of the observations made by the Apex Court in paragraph 111 of the judgememt in Brojo Nath Ganguly (supra).

21. In view of the discussions as made above, question no. (i) is answered in the negative with the finding that the respondent authorities were not justified in laying the demand of Rs. 9,60,891/- as a precondition for accepting the resignation of the petitioner due to infringement/violation of the conditions of service bond which she had furnished at the time of her appointment on the post of Accounts Clerk in the South Eastern Railway and as a consequence thereof, the order dated April 26, 2016 issued by the respondent no. 2 is set aside.

22. Now we shall endeavor to fathom the expenditure incurred by the respondent authorities to train the petitioner during her tenure of service as an Accounts Clerk for the period from July 17, 2013 till February 28, 2016, since the resignation tendered by her was accepted with effect from February 29, 2016, communicated vide letter dated April 29, 2016. By swearing an affidavit before this Court, the respondent no. 2 attempted to project in paragraph 9 of the said affidavit by pleading that expenditure incurred for providing training to the petitioner was Rs. 5,81,000/- excluding the expenses made for participation in certain tournaments. At the same time, the respondent authorities had to admit in the said affidavit, in paragraph 7, that the writ petitioner being one of the table tennis team members performed well in tournaments in 2013-2014 and 2014-2015 and was able to bag medals and earned honour and fame for the South Eastern Railway.

23. Despite such formidable performance by the petitioner as a table tennis player, which emanates from paragraph 7 of the said affidavit, the concerned authority of the South Eastern Railway calculated Rs. 5,81,000/- being the quantum of expenditure made for the petitioner for training during her tenure which appears from page 16, Annexure R-1 to the said affidavit, containing the

calculation in tabular form quoted supra.

24. The calculation made by the concerned respondent authority for determining the expenditure incurred for training of the petitioner is erroneous due to the following reasons:

(a) Under serial no. 1 of the said table, Rs. 1,80,000/- was shown as part of expenditure though the same ought not to have been reckoned as expenditure for training of the petitioner. In fact, Rs. 1,80,000/- was the yearly salary of the petitioner which was paid to her for discharging the duty of an Accounts Clerk in the South Eastern Railway. It is preposterous that the pay one earned as a Central Government employee could be recovered from her only because she sought to resign without abiding by an unconscionable contract.

(b) Similarly Rs. 1,80,000/- was shown as a part of the total yearly expenditure which was spent for payment of salary to the coaches. This component of salary paid to the coaches ought also not have been shown as part of the expenditure since the petitioner was not provided any coach exclusively; rather the said expenditure was for the team ('expenditure of Table Tennis team', page - 16 of the affidavit).On consideration of the table of expenditure it appears that the coaches were employed for 4/5 players and even in the absence of the petitioner in the said table tennis team, the necessity of coaches would have remained for the other players. Therefore, the salary component of a coach/the coaches ought not to have been made part of the yearly expenditure incurred for providing training to the petitioner.

(c) Excluding the yearly salary component of the petitioner as well as a coach/ the coaches, the yearly expenditure for the team of five members comes to Rs. 2,21,000/- [5,81,000-(1,80,000+1,80,000)= 2,21,000]. Should the total yearly expenditure for training of table tennis team of five members be 2,21,000/- the yearly expenditure incurred by the concerned respondent for the petitioner ought to be Rs. 44,200/- (2,21,000 divided by 5).

25. Taking into account Rs. 44,200/- being the yearly expenditure incurred by the concerned respondent authority as calculated above for providing training to the petitioner, the respondents are entitled to demand proportionate sum for the period the petitioner served as Accounts Clerk in the South Eastern Railway and hence, question no. (ii) is answered accordingly.

26. Answer to question no. (iii) rests on the answers to question nos. (i) and (ii) and discussions made hereinabove. As the order dated April 26, 2016 issued by the respondent no. 2, whereby demand was made against the petitioner to pay Rs. 9,60,891/- before acceptance of her resignation has been set aside by us above, the petitioner is entitled to refund of the said amount of Rs. 9,60,891/- which she paid to the respondent authorities on April 26, 2016 by demand draft dated April 26, 2016 upon adjusting the amount to be calculated towards expenditure incurred by the respondent authorities for training of the petitioner during her tenure based on Rs. 44,200/- per year as decided hereinabove.

Although the demand made by the respondent authority to deposit Rs. 9,60,891 prior to accepting the petitioner's resignation vide order dated April 26, 2016 has found to be unsustainable, this court declines awarding interest to the petitioner.

27. Accordingly the order dated January 10, 2018 passed by the Central Administrative Tribunal, Calcutta Bench is set aside and the concerned respondent authorities are directed to refund Rs. 8,46,708/- (Rs. 9,60,891/- - Rs. 1,14,183/-). The petitioner worked for 2 years 7 months and few days, from 17th July, 2013 till the date of resignation on 29.02.2016; therefore, Rs. 1,14,183/- [Rs. 44,200/- + Rs. 44,200/- + Rs. 25,783/- (Rs. 44,200/- divided by 12 = Rs. 3,683/- x 7 = Rs. 25,783/-) = Rs. 1,14,183/-] may be deducted from Rs. 9,60,891/- towards the expenditure incurred by the respondent authorities for providing training to the petitioner during her tenure at the rate of Rs. 44,200/-per year.

28. The respondent authorities shall complete the above exercise at an early date but positively within a period of 3 months from the date of communication of this order.

29. On the above terms the writ petition is allowed. However, there shall be no order as to cost.

Urgent photostat certified copy of this order, if applied for, shall be furnished to the parties as early as possible upon furnishing usual undertaking.

(Saugata Bhattacharyya, J.)

Dipankar Datta, J.:-

30. Having perused the judgment prepared by my learned brother Bhattacharyya, J., I respectfully agree with His Lordship that for the reasons proferred the writ petition ought to succeed to the extent as indicated therein. However, upon examining the unreasonable and unconscionable profit making venture resorted to by the concerned zonal railway at the cost of a promising sportsperson who mustered the courage to obtain an employment in the Department of Revenue while being employed in the Department of Railways, both being departments of the mighty Central Government, I wish to pen my views in very brief.

31. One reason for taking exception to the action of the railway is this. The superior courts of India possess the jurisdiction to invoke Article 14 of the Constitution as also Section 23 of the Contract Act to strike down a clause in a contract which the court feels to be unconscionable having regard to the unequal bargaining power of the parties, is settled law. In the present case, the service bond obtained by the railway from the petitioner, without doubt, was the result of an agreement between two parties not having equal bargaining powers. It contained a clause which required the petitioner (if she were to discontinue service within five years of appointment) to pay back to the railway not only money that she had earned by her service but also money that she could have

earned had she continued in service till completion of five years' service, despite the fact that she brought laurels for the railway by winning medals in national level competitions. It is understandable if the expenses incurred for training the petitioner by the railway were asked to be paid back while she leaves service within the bond period. However, coming as it does from an Article 12 authority and particularly when the petitioner had not left her service in the railway being lured by a private employer but having earned her position through a competitive process to serve in another department of the Central Government and thereby serve the people of the nation, the act of the railway in obtaining in excess of Rs.9 lakh from her as a pre-condition for acceptance of resignation is in itself unfair, unconscionable, oppressive and unconstitutional, against the principles of distributive justice and public policy, and offending Article 14.

32. The other reason is this. It is beyond any debate that the relationship between the Government and its employee is not like an ordinary contract of master and servant. Origin of service under the Government is contractual, since an offer of appointment followed by its acceptance leads to commencement of an employer-employee relationship. But once appointed in Government service, the employee acquires a status and his rights and obligations are no longer determined by the consent of both the parties but by the statute or statutory rules, as framed, and whenever altered by the Government. However, even in cases where service is governed by a contract of employment, such a contract to serve the Government can never be a contract of slavery. That would be opposed to the quintessence of equal justice, so very dearly safeguarded by our Constitution. Any and every action of a State employer, when challenged, must stand the test of Articles 14 and 16. The terms of the contract which are not in consonance with the rules governing the service cannot be enforced by the Government against its employee; likewise, the employee too cannot enforce any term against the Government which is not so consonant with the rules. It has not been shown to us that demanding money payable in terms of a service bond that the petitioner had executed has statutory sanction. In the absence thereof, the action is indefensible and hence the railway is bound to refund to the petitioner quantified in the operative part of the order by His Lordship.

