IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 14.11.2018

\+ **W.P.(C) 6597/2017**

VIJAYA KUMAR ANUGANDULA

…Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. ...Respondent

WITH

\+ **W.P.(C) 9279/2017 & CM No. 37900/2017**

RAJ KUMAR …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD.(DFCCIL) ...Respondent

WITH

\+ **W.P.(C) 11517/2017 & CM No. 46952/2017**

VIKAS SINGHAL …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. (DFCCIL) ...Respondent

WITH

\+ **W.P.(C) 2167/2018 & CM No. 8962/2018**

JOGENDER …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. ...Respondent

WITH

\+ **W.P.(C) 2779/2018 & CM No. 11231/2018**

KULDEEP KUMAR …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. (DFCCIL) ...Respondent

WITH

\+ **W.P.(C) 4278/2018 & CM No. 16693/2018**

SANJAY KUMAR KHODABHAI PATEL …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. (DFCCIL) ...Respondent

WITH

\+ **W.P.(C) 520/2018 & CM No. 2231/2018**

JAGMOHAN SINGH RAWAT …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. (DFCCIL) ...Respondent

WITH

\+ **W.P.(C) 6349/2018 & CM No. 24425/2018**

MANISH KUMAR SHUKLA …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. (DFCCIL) ...Respondent

WITH

\+ **W.P.(C) 4851/2017 & CM No. 20954/2017**

NAVNEET KUMAR MEHTA …Petitioner

versus

DEDICATED FREIGHT CORRIDOR CORPORATION OF INDIA LTD. (DFCCIL) ...Respondent

Advocates who appeared in this case:

For the Petitioner	:	Ms Anjali J. Manish, Ms Priyadarshi Manish, Ms Nidhi Saini, Ms Ritaj Kacker, Advocates.
For the Respondents	:	Ms Rekha Aggarwal, Mr V.S.R. Krishna, Advocates for DFCCIL.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioners have filed the present petitions, *inter alia*, seeking a direction to the respondent (Dedicated Freight Corridor Corporation of India Limited – hereafter 'DFCCIL') to transfer Service agreement - cum - Bond (hereafter 'Service Bond') of the petitioners to the other Public Sector Enterprises (hereafter 'PSU') or Government organizations, where they are currently employed. The

petitioners are, essentially, aggrieved by the action of DFCCIL in insisting on recovery of ₹6 lakhs from each of the petitioners for their failure to continue in service of DFCCIL for the minimum period of five years as stipulated in their contract of employment, and the Service Bond executed by each of the petitioners.

2. The petitioners contend that in terms of the Office Memorandums dated 09.05.1960, 15.04.1966, 13.06.1977 and 29.07.2004 (hereinafter referred to as 'the OMs') issued by Ministry of Home Affairs, the Service Bonds executed in favour of DFCCIL are not to be enforced against the employees who leave a government organization to join another government organization, or any other autonomous body under the Central or State Government. DFCCIL has countered the aforesaid contention on the ground that the OMs pertain to only employees who have been provided Scientific and Technical training and those that have applied for employment to other organizations through proper channels.

3. The controversy involved in all these petitions is common and, therefore, the petitions have been heard together.

4. A tabular statement indicating the details of the period served by the respective petitioners with DFCCIL and the department/PSUs, with which the petitioners are currently employed, is set out below:

S.No.	W.P. (C) No.	Name of the petitioner	Post in DFCCIL	Duration of Employment with Respondent	Current Employment

1.	6597/2017	Vijay Kumar Anugandula v DFCCIL	Executive (Finance)	More than 2.5 years	Airport Authority of India
2.	9279/2017	Raj Kumar v DFCCIL	Executive (Civil)	2 years 1 month	Ministry of Road Transport and Highway
3.	11517/2017	Vikas Singhal v DFCCIL	Assistant Project Manager	Completed 3 years	Delhi Metro Rail Corporation
4.	2167/2018	Joginder v DFCCIL	Executive (Finance)	2 years 9 months	Uttar Haryana Bijli Vitran Nigam LImited
5.	2779/2018	Kuldeep Kumar v DFCCIL	Executive (Electrical)	1 year 11 months	New Delhi Municipal Corporation
6.	4278/2018	Sanjay Patel v DFCCIL	Executive (Finance)	Almost 3 years	Department of Finance (Commercial Officer)
7.	520/2018	Jagmohan Singh Rawat v DFCCIL	Executive (Finance)	2 years 9 months	National Capital Region Transport Corporation
8.	6349/2018	Manish Kumar Shukla v DFCCIL	Junior Engineer	1 year 8 months	Military Engineer Services
9.	4851/2017	Naveen Kumar Mehta v DFCCIL	Executive (Finance)	More than 2 years and 3 months	National Buildings Construction Corporation

5. This Court would refer to the facts as relevant to W.P. (C) 6597/2017 for addressing the controversy raised in these petitions. The counsel appearing for the parties also agree that the decision in the said matter would be determinative of the other petitions as well.

Factual Background

6. DFCCIL is a Public Sector Undertaking (PSU) under the administrative control of Ministry of Railways. It has been setup by the Central Government to build high capacity and high speed rail freight corridors along the highway network connecting four metro cities of India; that is, Kolkata, Delhi, Mumbai and Chennai.

7. In the year 2014, DFCCIL issued a notice (Adv. No. 5/2014) inviting applications for recruitment to the posts of Assistant Manager and Executive in various disciplines. In response, the Shri Vijay Kumar Anugandula (the petitioner in W.P. (C) 6597/2017 – hereafter 'the petitioner') applied for the aforesaid post and on 16.02.2015, he received an appointment letter for the post of Executive (Finance) in Grade E-0. The pay scale for the posts in Grade-E was ₹12,600-32,500/- (IDA). In terms of Paragraph 10 of the said appointment letter, the petitioner was required to execute a Service Bond to serve DFCCIL for a minimum period of five years and on failure to do so, he would have to indemnify DFCCIL for an amount equivalent to one year of current salary subject to a payment of minimum of ₹6 lakhs. The said clause further provided that the petitioner's application for employment outside DFCCIL would not be forwarded during the initial period of three years. In Paragraph no. 12 of the said letter, it was further stated that the petitioner could not apply for any posts in other organization without the prior permission of the Competent Authority in DFCCIL, and the notice period for resignation from the

post was minimum three months or pay in lieu thereof. Paragraph 10 and 12 of the said appointment letter are set out below:

> “10. You are required to execute a "Service agreement-cum-Bond" as in the proforma annexed herewith to serve DFCCIL for a minimum of Five (05) years from the date of joining failing which the candidate would have to indemnify DFCCIL for an amount equivalent to one year of current salary i.e. (current basic pay+ DA) X 12 only subject to minimum of Rs. 6 lakhs only for Executives). For this purpose the candidate has to sign a Bond in the appropriate format at the time of joining DFCCIL. Moreover, the application of such a candidate for outside employment will not be forwarded during the initial period of Three (03) years from the date of joining DFCCIL.
>
> 12. A DFCCIL employee cannot without the prior permission from the company, engage in any trade or business or undertake or negotiate for any other work or employment, full time or part time, while in the service of the company. Also a DFCCIL employee can not apply for posts in other organization without the prior approval of the Competent Authority. The notice period for resignation is minimum 3 months or pay in lieu thereof.”

8. The petitioner joined the service of DFCCIL on 05.03.2015 as an Executive (Finance). He was provided four weeks foundation training at Zonal Railway Training Institute (ZRTI), Udaipur for a period of four weeks (from 09.03.2015 to 04.04.2015). Thereafter, he was provided on job training at Vadodara and Meerut for a period of two weeks and three weeks respectively. He was also provided Finance training at ZRTI. The petitioner claims that his training lasted about two months.

9. On 08.05.2015, by an office order, the petitioner was posted under CPM/ADI(WC) as Executive (Finance).

10. Thereafter, on 07.12.2016, the petitioner submitted a representation to the GM (HR) of DFCCIL seeking permission for appearing, *inter alia*, for an online test of AAI for the post of Junior Executive (Finance). By a letter dated 26.12.2016, DFCCIL refused to grant a No Objection Certificate (NOC) to the petitioner on the ground that outside employment could not be allowed as per the terms of the Service Bond and the letter of appointment.

11. The petitioner took the written exam of AAI and successfully cleared the said exam. Thereafter, the petitioner sent a representation dated 03.02.2017 to DFCCIL stating that no terms regarding non-issuance of NOC is available as per the Service Bond, and further requesting to issue a NOC for appearing in interview round of the aforesaid exam. The said request was denied by a letter dated 17.02.2017.

12. On 08.05.2017, the petitioner received an appointment letter from the Airport Authority of India (AAI) dated 06.05.2017 for the post of Junior Executive (Finance) in the pay scale of ₹16,400-40,500/-. The date of joining was stated as 29.05.2017. Thereafter, the petitioner sent his resignation letter dated 12.05.2017 to the Competent Authority. He further sent a letter to the recruitment cell of AAI and stated therein that he would work on the said post in DFCCIL for another three months as per the notice period, in terms of

the appointment letter. Accordingly, the petitioner requested that time for joining AAI be extended till 29.08.2017 and the request was granted to him.

13. In the meanwhile, the petitioner filed an application dated 03.03.2017 under the RTI Act seeking information as to the expenditure incurred on training by the Central Government. The petitioner received the required information by a reply dated 27.03.2017 wherein, as per the guidelines issued by the Railway Board dated 08.11.2016, the training cost was stated to be ₹3,191/- per day. According to the petitioner, the costs incurred by DFCCIL works out to a sum of ₹1,91,460/- for two months (60 days) of training period.

14. Thereafter, on 23.05.2017, the Joint General Manager of DFCCIL sent a letter to the petitioner calling upon him to deposit ₹6 lakhs in terms of Paragraph 10 and 12 of the appointment letter, consequent to which the resignation of the petitioner could be considered by the Competent Authority. In reply, the petitioner sent his representation dated 02.06.2017 highlighting the DPE Guidelines and the Railway Guidelines on transfer of Service Bond from one PSU to another PSU. In light of the said guidelines, the petitioner requested to transfer his Service Bond to AAI.

15. The petitioner received a reply on 18.07.2017 to the said representation dated 02.06.2017, wherein it was stated that the petitioner's request could not be acceded to, as his application was not

forwarded through proper channel due to non-fulfillment of the terms and conditions of the Service Bond and the appointment letter. It was further stated therein that the said DPE Guidelines would not be applicable as per the prevailing policy in DFCCIL.

Reasons and Conclusion

16. The first and foremost question to be addressed is whether DFCCIL is required to refrain from enforcing the Service Bond in terms of the OMs issued by the Department of Public Enterprises (DPE) and the Railways.

17. It is relevant to note that the website of DFCCIL indicates that it's a special purpose vehicle set up under the administrative control of the Ministry of Railways to undertake plant and development, mobilization of financial resources and construction, maintenance and operation of dedicated freight corridors. It is also not disputed that the railway employee is permitted to apply in response to notices issued by Government Department/Public Sector Undertakings/Autonomous Bodies that are controlled wholly or substantially by Central or State Governments. The office order issued by Railway Administration expressly indicates that a railway employee may be given four opportunities to apply for such opportunities in an year. The applications of such employees are also required to be forwarded by the General Manager in case of officers below junior administrative grade or by any other subordinate authority, to whom such powers may be delegated. Applications of officers of Junior Administrate

Grade and above are to be forwarded to the Railway Board (Office orders dated 16.12.1965 and 18.05.1973).

18. Admittedly, several Office Memorandums (OMs) have been issued by various Ministries including the Ministry of Home Affairs and Ministry of Finance, clearly specifying that service bonds furnished by employees receiving scientific and/or technical training should be enforced only when such employees leave service to secure employment with private agencies. The petitioner has referred to an OM dated 09.05.1960 [OM No. 70/10/60-Estt(A)] issued by Department of Personnel and Administrative Reforms, Ministry of Home Affairs, wherein it has been stipulated that administrative authority should ordinarily forward the applications of employees except where public interest provides otherwise.

19. The petitioners have also referred to OM dated 15.04.1966 issued by the Ministry of Home Affairs [OM No. F.5/10/66-Estt(C)]. The said OM is set out below:-

"No.F.5/10/66-Ests(C)
Government of India
Ministry of Home Affairs

New Delhi, the 15th April, 1966

OFFICE MEMORANDUM

Subject: Applications of Governments servants for employment elsewhere - principles to be observed while considering the question of forwarding.

The undersigned is directed to refer to para 4 of this Ministry's O.M. No. 70/10/60-Ests(A) dated the May, 1960 according to which the terms of the bond (Which Government Servants receiving scientific or technical training at Government expenses have to execute undertaking to repay the money in the event of their failure to serve Government for a specified number of years after completion of their training) are to be enforced only against those Government Servants who leave Government Service in order to secure private employment. It has now been decided, in consultation with the Ministry of Finance, that, while the terms of the bond referred to above may not be enforced, as at present, in the case of Government Servants who leave government service to secure employment under a State Government, a public sector undertaking owned wholly or partly by the Central Government or by a State Government, or under quasi Government Organizations, a fresh bond should be taken from such Government servants to ensure that they serve the new employer viz. the State Government / undertaking / Organization for a period of three to five years, the exact period being determined in each case by the Ministry / Department taking into account the amount spent by them (Ministry / Department) on their training.

Ministries etc. are requested to bring the above to the notice of all concerned.

Sd/-
(Harish Chandra)
Under Secretary to the Govt. of India"

20. The Bureau of Public Enterprises, Ministry of Finance also issued an Office Memorandum dated 13.06.1977 on the subject. The said OM is relevant and is set out below:-

"Mayor Bhavan (7th Floor), Conn. Circus,
New Delhi, the 13th June, 1977

OFFICE MEMORANDUM

Subject: Enformation of bounds in respect of employees of public enterprises, who leave the services of one undertaking to joint another undertaking/government.

Instances have come to the notice of the Government where employees of the Public Enterprises who get selected for Allied Services or for Central / State Government services through competitive examinations held by the Union Public Service Commission / State Public Service Commissions, or for services under quasi-Government Organizations / Public Enterprises on the basis of its interview laws, have been called upon to pay varying amounts, to themselves released from the bonds executed by them at the time and ongoing higher scientific / technical training at the cost of Public Enterprises. Barriers like this have not only hampered the aspects of bright candidates but have also inhibited the mobility of employees between the Public Enterprises on the one hand and the Central / State Government and other semi-government organizations the other.

According to the extant instructions issued by the agreement in 1966, if a central government servant leaves his job taking up employment under a State Government / Public Sector Undertaking, owned wholly or partially by the Central Government by a State Government or under quasi government organization, terms of any bond committing him to serve the Government for a stipulated period, which might have been executed by him did not be informed, although afresh bond should be taken from a government servant to ensure that he serves the now employer the government, Public Sector Undertaking / quasi government organization, for an appropriate period to be determined in each case by erstwhile Ministry / Department, taking into account the amount by them on their training.

> The question whether the terms of the bond executed by the employees of the Public Enterprises, who have received scientific / technical training at the cost of Public Enterprises should be informed or not in cases where they join Central Government / State Government services or take up employment under quasi—government organizations / Public Enterprises either on the basis of competitive examinations / tests / in previous organized by those organizations of the Union Public Service Commission / State Public Service Commission, or otherwise has been under consideration for some time. It has been now decided that the enforcement of bond not be insisted upon in the case of an employee of a Public Enterprises who joins the Central Government / State Government, quasi - government organizations or another Public Enterprises, subject to the conditions that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the organization bond period.
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> 4. Ministry of Industry, etc. are requested to bring the foregoing to the notice of the Public Enterprises under their administrative control for compliance.

Sd/-
(S. Krishna Moorthy)
Joint Director Tele. No. 46191"

The DPE also issued further OMs dated 23.05.1981 and 05.02.1985 on the above mentioned subject.

21. The DPE withdrew the aforementioned OMs by an OM dated 10.12.1997 (OM NO. 20(5)/95-DPE(GM). After deletion of the said guidelines, the Department of Public Enterprises received various representations and references for revival of the said guidelines. The

position was reviewed and DPE decided to revive the said OMs with certain modifications. In this regard, the DPE issued another OM dated 29.07.2004 (DPE OM No. 15(2)/2003-DPE(GM)/GL-57) clearly stating that the OMs dated 13.06.1977, 23.05.1981 and 05.02.1985 were revived subject to certain modifications, which are set out below:-

> "(a) The bond executed by employees of the Public Enterprises, who have received scientific/technical training at the cost of Public
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> Enterprises and have applied through proper channel during the currency of the bond join Central Govt./State Govtsen/Ices or take up employment under quasi-government organizations or any other public enterprise either on the basis of competition examinations/tests/interviews organized by those organizations or the Union Public Service Commission should riot been forced subject to the condition that a fresh bond Is takeri to ensure that the employee serves the new employer for the balance of the original bond period.
>
> (b) The terms of bond whereby an employee of a Central public enterprise receiving scientific and technical training out the expenses of the Govt./Public Sector Enterprises undertakes to repay this specified amount In the event of his failure to serve the enterprise for a Stipulated period after completion^ of his tralriing should not been forced against an employee who leaves service of public enterprise to secure, with proper permission, employment under the Central Govt, a public enterprise or an autonomous body wholly or substantially owned/financed/controlled by the Central/State Govt. Afresh bond should be taken from the person

concerned to ensure that he serves the new employer for the balance of the original period.

(c) To ensure that the requirement of obtaining a fresh bond from a person, where necessary, is fulfilled, the enterprise with whom-the employee has executed the original bond may at the time of forwarding his application write to the organization etc. under whom the employee intends to take up another appointment intimating them about the bond obligation of-the individual and clarifying that In the case of his selection for the new post, his release will be subject to the condition that the new organization take from him afresh bond binding him to ser/e them for the balance of the original bond period: in case he falls to serve the new department/organization etc. 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 be realised from the individual and refunded to the first organization with whom heoriginally executed the bond.

2. All the administrative Ministries/Departments are requested to kindly Issue necessary instructions accordingly to the public sector enterprises under their administrative control."

22. The learned counsel for DFCCIL conceded that the said OMs issued by the Department of Public Enterprises were binding on DFCCIL. However, it was contended that the said OMs would not be applicable in the case of the petitioners for two reasons; (i) that the petitioners were not imparted any scientific or technical training; and (ii) that their applications were not forwarded through proper channels. The DFCCIL relied upon its policy circular dated 20.02.2014 which, *inter alia*, provided that "*no request for forwarding*

of application will be entertained during the initial phase of three years from the date of joining". He, accordingly, submitted that the petitioners could not avail of the benefit of the OMs dated 13.06.1977 and 29.07.2004.

23. It is also relevant to note that Clause 10 of the appointment letter also expressly clarified that an application of a candidate for outside employment will not be forwarded during the initial period of three years from the date of joining DFCCIL.

24. The contentions advanced on behalf of DFCCIL are merited. There is no material on record to indicate that the training imparted to the petitioners (except the training imparted to Sh Raj Kumar and Sh Kuldeep Kumar – petitioners in W.P.(C) 9279/2018 and 2279/2018) was technical training. The respective applications of the petitioners were also not forwarded by DFCCIL, as the petitioners had not completed the initial period of three years. Also, there is no challenge to the aforesaid OMs.

25. However, it would be also be relevant to note that in terms of the instructions issued by the Indian Railways, an employee is entitled to apply for posts to other PSUs/Government Department and can avail of such opportunities four times a year. Further, the Office Memorandum dated 09.05.1960 issued by the Ministry of Home Affairs [OM 70/10/16-Estt.(A)] clearly stipulated that "*except where public interest otherwise demand, the administrative authority should ordinarily forward applications ...*". It is also expressly provided that

"the Heads of Departments should interpret the term 'public interest' strictly and subject to that consideration, forwarding of applications should be the rule rather than the exception".

26. By adopting a policy not to forward an application of an employee within the period of three years, DFCCIL has effectively excluded the benefits of the OMs to its employees. Plainly, if the OMs are binding and the DFCCIL was required to extend the same to its employees, it would not be open for the DFCCIL to exclude the benefit of such OMs and circumventing the same by adopting a policy of not forwarding any application.

27. This Court also has reservations as to whether it would be open for DFCCIL to draw a distinction between employees who have been imparted scientific and technical training and those that have not been imparted any such training for the purposes of releasing them from the Service Bond. It is settled law that reasonable classification is permissible; however, for a classification to be reasonable, it should have a nexus with the object of such classification failing which the classification would fall foul of the equal protection clause of the Constitution. In this context, it is important to mention that the rationale of calling upon the employees to furnish a bond is to ensure that the Government is not deprived of its investment made in imparting training to government servants. It is to serve this objective that it is stipulated that Government employees who receive scientific and technical trainings be required to serve the Government Departments/PSUs for the minimum period as specified in the bond.

OM dated 09.05.1960 was issued by the Ministry of Home Affairs to the aforesaid end. There would be no rationale for insisting upon a service bond in respect of employees that do not receive any specialized training.

28. It is also relevant to refer to the decision of the Supreme Court in ***D.S. Nakara & Ors v Union of India: AIR 1983 SC 130***. In that case, the Supreme Court found that cutoff date of superannuation, fixed for classifying the employees for receipt of pension under the liberalized pension scheme, was arbitrary given the object of the said scheme. The Court further proceeded to direct that all pensioners governed under the relevant rules would be entitled to pension.

29. In the present case, the petitioner has not challenged the OMs and further no arguments were advanced by the learned counsel for the petitioners as to whether restricting the benefits of the OMs only to employees that have been granted scientific or technical training is constitutional. The petitioners had also not challenged the validity of the DFCCIL's policy not to forward the applications within the initial period of three years, as unconstitutional. Further, the learned counsel had not addressed any arguments on this aspect as well, therefore, it would not be apposite for this Court to consider the same.

30. The next question to be examined is the import of Clause 10 of the appointment letter and the Service Bond executed pursuant thereto. In terms of Clause 10 of the appointment letter, the petitioners were required to execute a Service agreement – cum – Bond (Service Bond)

agreeing to serve for a minimum period of five years from the date of joining DFCCIL. The petitioners had agreed to indemnify DFCCIL for an amount equivalent to one year current salary i.e. *"[(current basic pay + DA) X 12 subject to minimum of ₹6 lakhs]"*. In terms of the Service Bond executed by the petitioners, the petitioners had, *inter alia*, agreed as under:-

> "To indemnify DFCCIL for an amount equivalent to one year of salary (current basic pay + DA) X 12 only, subject to minimum of Rs. Six (06) Lakhs on failure to serve DFCCIL, for a minimum period of Five (05) year from the date of joining. The application of such probationer/employee for outside employment will not be forwarded during the initial period of Three (03) years from the date of joining DFCCIL."

31. It is apparent from the language of the Clause 10 of the appointment letter as well as the Service Bond that the petitioners had agreed to indemnify DFCCIL to the extent as indicated therein (that is, 12 months salary subject to a minimum of ₹6 lakhs). Plainly, the said Clause cannot be read to mean that in all circumstances, the petitioners would have to pay a minimum of ₹6 lakhs as contended on behalf of DFCCIL. DFCCIL may be entitled to recover the expenses or loss suffered by it for failure on the part of the petitioners to comply with the terms of their letter of appointment or the Service Bond. The amount stated in the Service Bond is the maximum extent of the liability of the petitioners for failing to complete the minimum term of service of five years.

32. It is important to note that the petitioners had filed applications under the Right to Information Act, 2005 and sought information as to the expenditure incurred on the training imparted to them. The petitioners had also computed the cost that would have been incurred by DFCCIL in the training imparted to the petitioners. In all cases, the cost stated to have been incurred by DFCCIL was under ₹2 lakhs. In case of Vijay Kumar Anugandula – the petitioner in W.P.(C) 6597/2017 – the cost had been worked out at ₹1,91,460/-. It is relevant to note that the learned counsel appearing for DFCCIL did not seriously dispute that the cost incurred in imparting training to the petitioners would be in the vicinity of the amount claimed by them. It was, however, contended that the recruitment process is a long drawn process and DFCCIL has to incur substantial cost for the same.

33. At this stage, it would be relevant to refer to the remuneration drawn by the petitioners. A tabular statement indicating the salary (& Dearness Allowance), as drawn the petitioners at the stage of their joining the services of DFCCIL and as last drawn by them, is set out below:-

S.No.	W.P. (C) No.	Name of the petitioner	First salary drawn (First Pay + D.A.)	Last Salary Drawn (Current Pay + D.A.)
1.	6597/2017	Vijay Kumar Anugandula v DFCCIL	12600+12663=Rs.25,263	13370+15910=Rs.29,280
2.	9279/2017	Raj Kumar v DFCCIL	12600+12928=Rs.25,528	13370+15910=Rs.29,280
3.	11517/2017	Vikas Singhal v DFCCIL	24900+24427=Rs.49,327	30880+36902=67,782

4.	2167/2018	Joginder v DFCCIL	12600+12663=25,263	13370+16619=29,989
5.	2779/2018	Kuldeep Kumar v DFCCIL	12600+15158=27,758	13370+16619=29,989
6.	4278/2018	Sanjay Patel v DFCCIL	12600+12663=25,263	13370+16619=29,989
7.	520/2018	Jagmohan Singh Rawat v DFCCIL	12600+12663=25,263	13370+16619=29,989
8.	6349/2018	Manish Kumar Shukla v DFCCIL	12600+15158=27,758	12980+16134=29,114
9.	4851/2017	Naveen Kumar Mehta v DFCCIL	12600+12663=Rs.25,263	12980+15511=Rs.28,491

34. It is apparent from the aforesaid table that in all cases (except in the case of Vikas Singhal (W.P. (C) 11517/2017), the demand of ₹6 lakhs would amount to more than 20 months' salary.

35. Thus, according to DFCCIL, the petitioners are liable to forfeit their salary for almost 20 months in order to leave its employment prior to completion of the term of five years. Further, according to DFCCIL, it would make no difference whether an employee leaves service after completion of four years and 364 days (one day short of completing the term of five years) or whether he leaves the service immediately after being appointed. Plainly, the same cannot be accepted. If Clause 10 of the Letter of Appointment is read in the manner as canvassed on behalf of DFCCIL, it would have to be read as a clause imposing penalty *in terrorem*. This Court also cannot

ignore the fact that the petitioners and DFCCIL are not in equal bargaining position. It was contended on behalf of DFCCIL that the petitioners had entered into the contract of employment on their own volition and being fully aware that they would be required to pay the minimum amount of ₹6 lakhs if they failed to complete the terms of service of five years. While, it may be correct that the petitioners had accepted the appointment letter, it is not possible to accept that they had any leeway in negotiating the terms of the employment. Indisputably, the petitioners had no bargaining power. The petitioners either could accept the appointment letter or give up their remployment opportunity . An employment contract in such circumstances cannot be viewed as a commercial contract between two parties enjoying comparable bargaining powers. The Supreme Court had highlighted this aspect in ***Central Inland Water Transportation Ltd v Brojo Nath Ganguly & Anr*** : ***AIR 1986 SC 1571***. In that case, the Court struck down the rule (which form a part of their employment contract) that entitled the appellant Corporation to terminate employment of an employee without assigning any reasons. In ***Gillespie Brothers & Company Ltd. v Roy Bowles Transport Ltd*** : ***1973 1 QB 400***, Lord Denning had imported the test of reasonableness and fairness of construing a clause in a contract. The relevant extract of the said decision is set out below:-

> "The time may come when this process of 'construing' the contract can be pursued no further. The words are too clear to permit of it. Are the courts then powerless? Are they to permit the party to enforce his unreasonable clause, even when it is so unreasonable, or applied so

> unreasonably, as to be unconscionable? When it gets to this point, I would say, as I said many years ago :
>
> 'there is the vigilance of the common law which, while allowing freedom of contract, watches to see that it is not abused' : John Lee & Son (Grantham) Ltd. v. Railway Executive [1949] 2 All. E.R. 581,
>
> 584. It will not allow a party to exempt himself from his liability at common law when it would be quite unconscionable for him to do so."

36. The above passage is also cited by the Supreme Court in ***Central Inland Water Transportation Ltd*** (*supra*).

37. This Court is of the view that construing Clause 10 of the appointment letter and the term of the Service Bond in a manner as canvassed by DFCCIL, would render the same as illegal and opposed to public policy.

38. The petitioners had agreed to indemnify DFCCIL to the extent as stated in the appointment letter as well as in the Service Bond.

39. The Shorter Oxford English Dictionary defines the word "Indemnify" as under:-

> "1. Preserve, protect, or keep free from, secure against (harm or loss); secure against legal responsibility for events; give an indemnity to.
>
> 2. Compensate for loss suffered, expenses incurred, disadvantages, annoyances, hardships, etc."

40. The petitioners had, thus, agreed to compensate DFCCIL for loss that may be suffered by it on account of their failing to serve

DFCCIL for a period of five years. Clause 10 of the appointment letter, and the Service Bond, must be construed as embodying the agreement to pay liquidated damages. As stated above, given the remuneration on which the petitioners were engaged and the limited training imparted to them, it appears that the stipulation to pay minimum liquidated damages of ₹6 lakhs is in the nature of penalty. As held by the Supreme Court in ***Fateh Chand v. Balkishan Dass: AIR 1963 SC 1405; Maula Bux v. Union of India: AIR 1970 SC 1955;*** and ***Union of India v. Raman Iron Foundry: AIR 1974 SC 1265***, clauses of liquidated damages which are in nature of penalty are void. Thus, there is good ground for the petitioners to contend that the stipulations contained in the Service Bond fall foul of Section 74 of the Contract Act 1872 and are not enforceable. (Also see: ***M/s Sicpa India Limited v. Shri Manas Pratim Deb: RFA No. 596/2002, decided on 17.11.2011***).

41. Having sated above, DFCCIL would be entitled to reasonable damages.

42. In the present case, the petitioners have already paid a part of the amount demanded by the DFCCIL. As noticed above, the cost incurred in imparting training to the petitioners has been computed by the petitioners on the basis of the applications furnished under the Right to Information Act, 2005 and there is no serious doubt as to such costs. In all cases, the cost so worked out is around ₹2 lakhs or below.

43. In the aforesaid view, this Court is of the opinion that the petitioners must pay a sum of ₹2 lakhs each to DFCCIL. The said amount would be paid within a period of four weeks from today. In case the petitioners have paid an amount in excess of ₹2 lakhs to DFCCIL, DFCCIL would refund the same to the concerned petitioner within the same period. This is without prejudice to the rights and contentions of the parties, and it would be open for the DFCCIL to institute appropriate suit for recovery of the said amount. It would be open for DFCCIL to establish the actual cost or loss incurred by it on account of failure on the part of the petitioners to complete a minimum term of service of five years. The petitioners, of course, would have full right to contest the said proceedings.

44. The petitions are disposed of with the above directions. The pending applications also stand disposed of.

VIBHU BAKHRU, J

NOVEMBER 14, 2018
PKV/RK