

Central Administrative Tribunal, Principal Bench

O.A. No. 2341 of 1998

New Delhi, this the 24th day of November, 2000

Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

(19)

Prem Shankar Shukla
s/o Shri B.L. Shukla
Ex. Asstt. Electrical Engineer
Northern Railway, Allahabad Division,
Retired as Project Manager (Electrical)
Indian Railway Construction Company,
New Delhi.Applicant

R/o C/o Shri Mukesh Gupta
173 Phase-II/Pocket 'A'
Mayur Vihar, Delhi.

By Advocate: Shri G.D. Bhandari.

Versus

Union of India through

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway
Northern Railway,
Allahabad.Respondents

By Advocates: S/Shri R.P. Aggarwal and B.S. Jain.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA has asked for the following reliefs:-

(1) To set aside and quash respondents' orders dated 25.5.93/3.6.93, Annexure A-1 whereby the applicant has been deemed to have retired retrospectively by almost 10 years w.e.f. 31.8.84, being badly vitiated as aforesaid and the respondents be directed/ordered to deem the applicant having been retired from Railway servant w.e.f. the actual date of issue of impugned orders when the Appointing/Competent Authority i.e., the General Manager/Northern Railway issued orders of applicant's

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✓ deemed retirement.

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(ii) To declare that office order No.168/89 dated 22.2.1989, A-35 issued by IRCON, are void ab initio as also Railway Board's orders dated 13.6.85, ordering permanent absorption in IRCON w.e.f. 31.8.84 both orders are illegal, void-ab-initio as also Railway Board's orders dated 13.6.1985, ordering permanent absorption in IRCON w.e.f. 31.8.1984 both orders are illegal, void-ab-initio as the appointing authority the GM/Northern Railway did not issue any deemed retirement orders of applicant from Railway service.

(iii) To direct/order the respondents to grant the applicant all consequential benefits of promotion vis-a-vis a junior and payment of resultant arrears of pay and allowances by deeming the applicant date of retirement from Railway from the actual date of issue of retirement orders by the competent authority by application of next below rules;

(iv) to declare that applicant is entitled to payment of arrears of salary & allowances with 24% interest thereon consequent to applicant promotion under the NBR rule alongwith 24% interest; and

(v) Any other relief deemed fit and proper may also be granted in addition to the heavy costs of the case in the interest of justice.

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2. The facts in brief are that the applicant while working as Electrical Engineer, a Group 'B' post in the Allahabad Division of the Northern Railway had gone on deputation to Indian Railway Construction Company (hereinafter referred to as IRCON) on 17.8.1981 for a period of one year. He could remain there for a maximum period of 3 years. The respondents - Northern Railway issued an order dated 25.5.93/3.6.93 vide Annexure A-1 whereby the applicant's deemed retirement/absorption was treated to be effective from 31.8.84. The applicant has assailed the same and urged that the retirement/absorption from retrospective effect is against the principles of law which is well established by now by various judicial pronouncements, as such he claims that the action of the respondents is illegal, arbitrary and the same is liable to be set aside.

3. The respondents are contesting the O.A. The respondents allege that retrospective acceptance of resignation and absorption of the applicant in the IRCON with retrospective date is well within the ambit of law and the applicant cannot challenge the same.

4. We have heard the learned counsel for the applicant and have gone through the record of the case.

5. There is no dispute to the fact that the applicant had gone on deputation w.e.f. 17.8.1981 to IRCON. The period of deputation was initially for a period of one year but the applicant continued in IRCON till he attained the age of superannuation on 31.8.1994.

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6. The learned counsel for the applicant submitted that after the expiry of period of 3 years, the applicant had been writing to the Northern Railway about his permanent absorption in IRCON but the respondents had been postponing the action, rather they had been lingering on and had issued the letter of absorption only on 3.6.93 so it should be deemed as if for all practical purposes the applicant stood absorbed only from the date when the order was issued since retrospective absorption is not permissible under law.

7. It is further stated that the applicant was issued a letter to give his consent for being absorbed and he had given his consent also but no action was taken. Later on he was again asked to give his consent for permanent absorption to be effective from 18.8.84 vide their letter dated 15.6.88 and applicant opted to be absorbed. It was also submitted that if it is not possible, he may kindly be repatriated to his parent office, i.e., Northern Railway. Despite prorated correspondence, no order was passed for absorption/retirement, so now the applicant says that his retrospective absorption and deemed retirement is bad in law and the same should be quashed. In support of his contention the learned counsel for the applicant has also referred to a Judgment given in OA No.1017/89 entitled as M.K. Sharma Vs. U.O.I. In that case the applicant who was working as a Fireman in the Northern Railway had gone on deputation to IRCON on 19.4.82 as a Project Manager and he continued to hold the said post there. It is further stated that during this period, employees' willingness or option for absorption was not obtained so he was repatriated to his parent office to his

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substantive post, but respondent No.3 vide their letter dated 20.11.1984 conveyed their decision to absorb the applicant with IRCON w.e.f. 1.9.84 and applicant in that case was asked to submit his request for the deemed retirement from the Railway and in response to that he submitted an application wherein he requested for immediate repatriation as no decision had so far been taken by the Northern Railway for either absorption or his deemed retirement, his request was allowed. So relying upon the various judgments, the Tribunal held that in view of the settled position of law, the respondents were directed that the resignation of the applicant shall be deemed to be operative only from the date of actual acceptance of the resignation and not retrospectively and in that case since the resignation was accepted w.e.f. 5.1.89 and applicant shall be deemed to have retired only on 5.1.1989 and not with retrospective effect, i.e., from 19.4.85.

8. On the same analogy the learned counsel for the applicant submits that in this case the order regarding deemed retirement/absorption was passed sometime in the month of 5.6.1993, so it should be deemed as if the applicant retired from Railway w.e.f. 3.6.93 and had been absorbed in IRCON on 3.6.93.

9. In reply to this, the learned counsel for the respondents submitted that the facts of the present case are distinguishable from the judgment cited by the counsel for the applicant because in that case before a decision was taken to absorb the applicant, the applicant was never asked to opt for absorption nor he had applied for his resignation/retirement whereas in this case the applicant

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had himself expressed his willingness to be absorbed in IRCON w.e.f. 17.8.84 itself vide Annexure-B. It is further submitted that as there was delay on the part of the authorities in accepting his resignation/deemed retirement, but that should not be taken as if the date of retirement had been extended too, and the authorities can very well accept resignation/retirement from the date as given in the letter by the applicant itself. Even this can be done with retrospective effect. To support this contention, the learned counsel for the respondents had referred to a Full Bench judgment entitled as Shri Vir Bhan Sood VS. U.O.I & Others - OA No.674/91 wherein the Hon'ble Full Bench after discussing the various judgments, had answered the question raised before it as under:-

"Whether on the facts and in the circumstances of the case, the acceptance of applicant's resignation with retrospective effect was valid?",

"Yes. On the facts and in the circumstances of the case, the acceptance of the applicant's resignation with retrospective effect was valid".

10. In the case of Vir Bhan Sood (Supra) which was the matter before the Full Bench therein also the applicant had made a request that his retirement be effective from a particular date and the Railway authorities had taken a lot of time to issue order of acceptance and it was accepted with retrospective effect so on those facts and circumstances of the case the Full Bench had answered the question in the affirmative. Comparing the facts and circumstances of the present case with the facts and circumstances of the case before the Full Bench we find that in this case also there is an admission on the part of

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the applicant himself that he had made a request to the Railway authorities for acceptance of deemed retirement/absorption w.e.f. 17.8.84 and vide impugned order the request of the applicant had been accepted and he had been allowed to retire w.e.f. 31.8.84. The learned counsel for the department has also placed on record instruction regarding Government employees proceeding on deputation to some Public Sector Undertaking and the maximum period allowed for deputation is 3 years, which cannot be extended on any ground. The applicant's 3 years deputation to IRCON, a Public Sector Undertaking was to expire on 17.8.84 that is why he had asked for his retirement/absorption w.e.f. 17.8.84. Merely because of administrative delay in acceptance of his request and in the meanwhile pay revisions in his parent department, the applicant cannot be allowed to somersault and change his date of retirement, that too after enjoying the benefit of deputation for a long time.

11. Hence, considering the facts and circumstances of the case and keeping in view the judgment of the Hon'ble Full Bench (Supra), we are also of the view that the department could legally accept the deemed retirement/absorption with retrospective date.

12. Thus, in our view, OA has no merits and same is hereby dismissed.

S.A.T.Rizvi
(S.A.T.Rizvi)
Member (A)

Kuldeep Singh
(Kuldeep Singh)
Member (J)