

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1237/94

Hon'ble Shri J.P.Sharma, Member (J)
Hon'ble Shri P.T.Thiruvengadam, Member (A)

New Delhi this 2nd day of March, 1995

Shri Murari Lal Tiwari
Dy. General Manager/RITES
27 Barakhama Road
New Delhi-110 001.
r/o D-III/5, 'RITES' Flats
Ashok Vihar-III
New Delhi-110 052.

..... Applicant

(By Shri D.R.Roy, Advocate)

Vs.

Union of India through

1. The Secretary
Ministry of Railways
Rail Bhawan
New Delhi-110 001.

2. Director General/RDSO
Manak Nagar
Lucknow-226 001.

3. FA & CAO (Pension)
Northern Railway
Baroda House
New Delhi - 110 003.

..... Respondents

(By Shri P.S.Mahendru, Advocate)

O R D E R

Hon'ble Shri P.T.Thiruvengadam, Member (A)

The applicant was working as a Inspector of Works in the Indian Railways. He was on deputation to RITES for a period of three years from 31.12.1982 to 31.12.1985. On the willingness submitted by the applicant to get absorbed, the RITES organization processed the case of absorption by their letter dated 20.11.1985 to the railways. It was proposed that the applicant may be deemed to sever his connections from his parent railway w.e.f. 1.1.1986 with a view to his permanent absorption in RITES. After following the requisite

formalities such as clearance of foreign service contribution and other dues accruing from leave benefits etc., the applicant was informed of acceptance of his resignation from railway service w.e.f. 1.1.86(FN) by a communication of the railway ministry dated 26.8.1986. Latter, all his settlement dues including 100 per cent commutation of pension were paid to him by 21.8.1987. This OA has been filed for a direction that the deemed date of retirement should be changed from 1.1.1986 to 26.8.1986 and for grant of all consequential benefits.

2. The main ground for the above prayer is that this tribunal has decided in the year 1987 in J.Sharan vs. UOI (OA No.364/86) that retirement from retrospective date is not in order.

3. The learned counsel for the respondents raised the preliminary objection with regard to limitation. It was argued that the acceptance of resignation had taken place by letter dated 21.8.1986 and the entire dues had been settled and paid by 21.8.1987. The applicant had submitted a representation on 7.1.1988 and that too for the benefit of being brought on to the 4th Pay Commissions scale from 1.1.1986. This representation was rejected on 26.2.1988. The learned counsel for the applicant however, drew attention to the letter dated 19.9.1991 issued by the office of RDSO under the Ministry of Railways, where the applicant had been working prior to being deputed to RITES. In this letter, both the requests of the applicant namely conferment of Fourth Pay Commissions scales as on 1.1.1986 and change in the date of absorption to 26.8.1986 have been rejected.

4. We note that this OA has been filed only on 7.6.1994. Even granting the letter of RDSO dated 19.9.1991 is to be treated as the final order, the application has been filed highly belatedly. The cause of action is the date of absorption i.e. this should be 1.1.1986 and not 26.8.1986. The applicant had chosen to remain silent right from 1991 to 1994. He has tried to revive his case by relying on the orders passed by this tribunal in J. Sharan's case in the year 1987. It has been held by the Apex Court in Bhup Singh Vs. UOI, JT 1992(3) SC 322 that Judgment and orders of the Court in other cases do not give rise to 'Cause of Action'.

5. Repeatedly their Lordships of the Supreme Court have held that parties should pursue the rights and remedies promptly and not sleep over them. If they chose to sleep over the rights and remedies for an inordinately long time the court may well chose to decline to interfere in its discretionary jurisdiction. (Ex. Cap. Harish Uppal Vs. UOI, JT 1994(3) 126 and State of Punjab Vs. Gurudev Singh - (1991)4 SCC1).

6. Having taken the full settlement dues in the year 1987 and not having agitated the matter in time, we do not think that this is a fit case where limitation could be overlooked.

7. The learned counsel for the respondents quoted the following citations in his favour:

(4)

13

A) Nitya Gopal Bowal Vs. UOI - 1994(1) 80J, 148.
B) Shri Mani Bhushan Rao Vs. GM, SE Railway, 1992(2) ATJ
657.

8. In the above two cases we note that the respective applicants had not been granted any pension and the tribunal thought it fit to intervene, accepting the plea that pensionary benefit is a continuous cause of action. Delay in filing the petition was over looked. In the case before us the applicant had been given the retirement benefits and seeks a change in the deemed date of absorption to enable him to claim further lumpsum benefits. In the facts of this case, we are not inclined to over look the rigors of limitation.

C) Nita Sharma Vs. UOI 1992(1) ATJ 261
D) V.Sivanand Dasam Vs. UOI 1991 (2) ATJ 604.

9. In these two cases relating to termination and seniority respectfully the tribunal accepted the reasons advanced with regard to the delay in filing the applications. We have dealt with limitation in this case already.

10. In the facts and circumstances of this case, the OA is dismissed on limitation. No costs.

J. P. SHARMA

(P.T.THIRUVENGADAM)
MEMBER (A)

J. P. SHARMA

MEMBER (J)

/RAO/