

(8)

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.1303 of 1989

3rd day of December, 1993.

Shri P.T. Thiruvengagam, Member (A).

Shri Arun Prasad,
s/o Shri Savitri Prasada,
r/o 12, Anand Lok,
New Delhi-110049.

Applicant

By Advocate Shri R.K. Kamal

Versus

Union of India through
Secretary, Railway Board,
Rail Bhavan, New Delhi.

Respondents

By Advocate Shri P.H. Ramchandani

O R D E R

Shri P.T. Thiruvengadam

The applicant was functioning as Additional Railway Manager, Delhi Division in the year 1985. On 24.1.1985, he was relieved on his posting in Rail India Technical & Economic Services (RITES), an Undertaking established by the Government of India, and the same day, he joined RITES as Chief Manager (Business Development). On 17.12.85, the Railway Board issued letter No.83/E(O)II/16/3 conveying the sanction of the President for the permanent absorption of the applicant in RITES in public interest w.e.f. 24.1.85. In this O.A., the applicant has challenged the retrospective effect given to the absorption orders dated 17.12.1985. The relief to the effect that the absorption orders issued should be effective from the actual date of issue with all consequential benefits, has been sought.

....2...
2

2. The applicant places reliance on a series of orders issued by this Tribunal wherein the retrospective operation of the date of permanent absorption had been quashed. However, the respondents argued that the case of the applicant is distinguishable in that the applicant was posted to RITES on immediate absorption basis and that he was not sent initially on deputation, as was the case with the applicants in the various orders cited by him in his favour. A copy of the approval by the Minister of Railways on behalf of the President of India was produced. In this, on 11.1.1985, the Minister had approved the absorption of the applicant who was at that time working as ADRM, Northern Railway, in RITES from the date of his release from the Railways. The Railway Ministry followed this by a letter to the Managing Director, RITES, on 21.1.1985, wherein the decision of the Ministry of Railways that the applicant may be absorbed permanently in RITES from the date of his release from the Railways, was communicated. In this letter, it is also mentioned that the sanction giving terms and conditions of absorption would issue in due course. It is the case of the respondents that the letter containing terms and conditions, could be issued only after the officer had actually been released from Railway service and had joined RITES. Thus, the formal sanction of the President, though obtained earlier in January, 1985, was conveyed only on 17.12.1985. Thus, this is not a case of retrospective operation of the date of permanent absorption in RITES.

3. The learned counsel for the applicant then argued that as far as the applicant is concerned, the only communication sent to him with regard to his permanent absorption was the one issued by the Railway Board on 17.12.1985. The earlier letter of 21.1.1985 issued by the Railway Board to RITES, conveying the decision that the applicant is to be absorbed permanently from the date of his release from the Railways, is purely an internal correspondence and the applicant cannot be expected to take note of such internal communication. The respondents then produced a copy of the release order of the applicant issued by the Northern Railway in their notice R.No.85/ADRM/Genl./36 dated 24.1.1985 which reads as under:-

"Shri Arun Prasad, ADRM, Delhi Division, is relieved of his posting in RITES in terms of Railway Board letter No.83-E(O)II-16/3 dated 21.1.1985....."

It was argued by the respondents that a copy of the letter of Railway Board dated 21.1.1985 conveying permanent absorption of the applicant from the date of release from the Railways, was endorsed to the General Manager, Northern Railway and it is to be expected that the applicant working in the Northern Railway, would have known this position since the release notice dated 24.1.1985 specifically mentioned Board's letter of 21.1.1985. It was further argued that if it were a case of deputation and not one

.....4....

of release on immediate absorption basis, the period of deputation would have been indicated in the release notice and there was no mention of the applicant being sent on deputation. I agree with the stand taken by the respondents.

4. The learned counsel for the applicant referred to a series of orders passed by this Tribunal. OA-617/87 (date of decision: 21.2.1992) and OA-850/92 (date of decision: 22.1.1993) ^{were} specifically referred to since in these decisions, most of the other citations have already been referred to. A perusal of all these orders indicates that these are all cases where the applicants therein had been posted to RITES on deputation. Either during their deputation period as originally allowed, or after the completion of such deputation period, these applicants had sought absorption in RITES. They had also resigned from their earlier posts under the Ministry of Rlys. Such resignations were accepted with retrospective effect. In these cases, the Tribunal had taken a consistent stand that the resignation becomes effective only from the date it is actually accepted by the competent authority and there cannot be a retrospective operation of the resignation date. However, in the present O.A., the circumstances are different in that the applicant was not sent on deputation, ~~but~~ ^{was} posted on immediate absorption basis. The severance of the connecting link had taken place from the date the applicant was released for RITES unlike in the cases cited, where the link continued till such time as a decision was taken

at a subsequent date to sever the same. Hence, these citations do not support the case of the applicant in this case.

5. Reliance was then placed on the order passed in OA-615/87 (date of decision: 5.5.1989). The applicant in that case was appointed to a public sector corporation on immediate absorption basis on 4.2.1985. However, only on 28.6.1985, the Government of India issued the order permitting the applicant to retire from his parent service with effect from the afternoon of 4.2.1985. The Tribunal had directed that the applicant's date of retirement shall be taken as 28.6.1985 and he was treated as on deputation between 4.2.1985 and 27.6.1985, but the distinguishing features in this case are that the letter dated 4.2.1985, not only stated that the appointment to the public sector corporation was on immediate absorption basis, but also added that the absorption was initially for a period of two years in the first instance. Also, necessary contribution was ^{received} ~~required~~ towards the Central Govt. Employees Group Insurance Scheme even after the applicant therein having ~~been~~ reported to the public sector corporation. These features are not available in the present case and hence, the orders passed in OA-615/87 cannot be extended to this case.

6. For the reasons as above, this O.A. is dismissed. No costs.

P. T. Thiruvengadam
(P.T. Thiruvengadam)
Member(A)