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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.No. 1748/1989
T.A.No.

DATE OF DECISION: 05-10-1993

Shri R.C. Barua Applicant(s)

Versus

U.O.I. through Secretary, Min. of Respondent(s)
Railways, Railway Board, New Delhi & Another

(For Instructions)

1. Whether it be referred to the Reporter or not? 40
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

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(S.K. DHAON)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

Regn.No.OA 1748/89

Date of decision:

Shri R.C.Barua ... Petitioner

vs.

Union of India through
Secretary,
Ministry of Railways,
Railway Board,
New Delhi & anr. ... Respondents

For the Petitioner ... Sh.B.S.Mainee, Counsel.

For the Respondents ... None

CORAM:

THE HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN
THE HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

JUDGEMENT

(BY HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN)

The petitioner, an erstwhile employee of the Railways, is aggrieved by the refusal of the respondents to allow him weightage of 5 years' service as permissible to officers on voluntary retirement.

2. The petitioner was working as Additional Financial Adviser & Chief Accounts Officer in the North Eastern Railway. He was spared by that Railway to take up an appointment as Director(Finance) in Indian Railway Construction Compay Limited(IRCON), a Public Sector Undertaking. He was permanently absorbed in IRCON with effect from 12.3.1984. He did not make any application to the Railways for being given a pre-mature retirement.

3. The petitioner relies heavily upon the communication dated 19.4.1984 of the F.A.& Chief Accounts Officer, North Eastern Railway, Gorakhpur to the Secretary/Estt. This communication was sent in connection with the fixation of the pension of the petitioner.

In it, the recitals, as material, are these. The petitioner has been spared for immediate absorption. In terms of Rule 37 of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the Rules), he shall be deemed to have retired on 12.3.1984 and his pension has been fixed and 1/3rd commutation has been paid in accordance with the normal rules giving him the benefit of five years weightage as admissible in case of voluntary/premature retirement. He has exercised his option for payment of terminal benefits equal to twice the amount of lumpsum commutation of 1/3rd of his pension as admissible in the case of Government servants who are absorbed in Public Sectors in terms of Rule 37 of the Rules. As this is the first case of its kind where an officer has been spared from the Railway service directly for absorption to a Public Sector, the Board are requested to confirm the action taken by the North Eastern Railway in fixing the pension after taking into account the five years benefit.

4. A copy of the said communication was forwarded to the petitioner with a note that the pension had been fixed taking into account the five years' service benefit. However, the same was subject to the confirmation from the Railway Board. Therefore, the fixation of the pension might be taken as provision.

5. Rule 2 of the Rules provides, inter-alia, that the Rules shall not apply to Railway servants. The petitioner being a Railway servant cannot, therefore, avail of the Rules. A communication dated 5.5.1984 by the Joint Secretary (E), Railway Board was sent to the General Manager, North Eastern Railway, Gorakhpur conveying the

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sanction of the President for permanent absorption of the petitioner in IRCON in public interest. The terms and conditions on which the petitioner had been permitted to be absorbed in IRCON are also stated therein under different captions, one of them being retirement benefits. Therein, it is stated that if the petitioner is governed by the SRPF(CON) Rules, he will be entitled to retirement benefits in respect of his Railway service in terms of Board's letters dated 11.2.1970 and 30.4.1971. In case he is governed by the Railway Pension Rules, the retirement benefits shall be regulated in accordance with Board's letters dated 18.2.1970, 10.9.1971, 11.9.1973 and 29.1.1976 read with letter dated 24.8.1970. On 23.6.1984, the F.A. & Chief Accounts Officer of the North Eastern Railway, Gorakhpur drew attention of the petitioner to the aforementioned letter dated 5.5.1984 of the Railway Board and pointed out that the Board in the said letter laid down the rules which will be applicable in working out the retirement benefits admissible in his case(the petitioner). As per the said instructions, the benefit of weightage of 5 years service contained in the scheme of voluntary retirement of Government servants was not admissible.

5. No argument has been advanced before us on the basis of the rules/instructions referred to in the said letter dated 5.5.1984. However, reliance is placed upon a general circular dated 9.11.1983 of the Joint Director Establishment(P&A), Railway Board. The subject

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of the communication is " Weightage of additional years of service for retirement benefits for Railway servants seeking voluntary/premature retirement under Pension Rules and SRPF(C) Rules". In para 3, the decisions of the Government, after reviewing the existing rules and orders governing retirement/premature retirement are set out. Sub-para(i) of Para 3, inter-alia, provides that while granting proportionate Pension/Special contribution to P.F. to a railway servant retiring voluntarily or prematurely under any of the above provisions, weightage upto 5 years would be given as an addition to the qualifying service.... This is clearly confined to a case of either voluntary retirement or a pre-mature retirement. Earlier, it is provided in the communication under reference, that a Railway servant before attaining the age of superannuation can seek a voluntary retirement on completion of 20 years' qualifying service, retirement on completion of 30 years' qualifying service, retirement on attainment of age of 50 years and retirement in respect of a Railway servant ^{not governed by Pension Rules.} Therefore, it is clear that para 3 had application only to a situation where the retirement had taken place under anyone of the aforesaid four conditions. The communication, therefore, does not advance the case of the petitioner.

6. Reliance is also placed on Office Memo. ^{the} dated 31.1.1986 which deals with/appointment of Central Government servants in the Central public enterprises on immediate absorption. The terms and condtions of such an appointment

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are contained in the said memorandum. Before adverting to its contents, we may note that it is recited in the memorandum itself that the orders contained therein will take effect from 8.3.1985. On the face of it, the memorandum has no application to the case of the petitioner who ^{was} admittedly absorbed in IRCON on 12.3.1984 and was deemed to have retired from the Railways from that date. However, we may deal with the provisions relating to pensionary benefits. Clause (i) of para 4 of the office memorandum is relevant. Its contents, as material, are that resignation from Government service with a view to secure employment in a Central public enterprise with proper permission will not lead to forfeiture/terminal benefits. In such cases, the Government servant concerned shall be deemed to have retired from service from the date of such resignation and shall be eligible to receive all the retirement/terminal benefits as admissible under the relevant rules applicable to him in his parent organisation. This memorandum clearly states that, in spite of resignation, a Government servant shall be treated to have retired from service. The fictional retirement is purposive. It entitles a Government servant to receive all the retirement/terminal benefits as would have been admissible to him if he had retired from service. The fiction created in clause under consideration cannot be used for creating another fiction that a Government servant shall be deemed to have voluntarily retired so as to enable him to receive such retirement/

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terminal benefits as are attracted to a case of voluntary retirement. We, therefore, come to the conclusion that, assuming memorandum dated 31.1.1986 is applicable to the case of the petitioner, he cannot drive any advantage from the same.

7. To the counter-affidavit filed on behalf of the respondents, a true copy of the Voluntary Retirement Scheme has been annexed. It inter-alia provides that it is open to a Railway servant to seek voluntary retirement after giving three months to the relevant competent authority. In the counter-affidavit filed, it has been averred that no such notice was ever given by the petitioner. It is also stated that the petitioner, at no stage, availed of the benefit of the voluntary retirement scheme.

8. Relying upon sub-rule(6) of Rule 48-A of the Rules, it is contended that for the purpose of Rule 37 it should be deemed that the petitioner took a voluntary retirement under Rule 48-A. In order to give a decision on this submission, it is necessary to have a quick reading of the Rules.

9. Rule 49 of the Rules sets out the pensionary entitlements of a Government servant retiring in accordance with the provisions of the Rules. The scheme of the said Rule is that the amount is quantified on the basis of the number of years of qualifying service put in by a Government servant. One situation deals with a Government servant who retires before completing qualifying service of 10 years. The other situation

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relates to a Government servant retiring after completing qualifying service of not less than thirty years. The next situation deals with the case of a Government servant retiring before completing qualifying service of 33 years but after completing qualifying service of 10 years. A Government servant who is deemed to have retired in Rule 37 ^{be} will/a Government servant retiring in accordance with the Rules as contemplated in Rule 49. Therefore, for the purpose of computation of pension, Rule 49 ~~the~~ would be attracted to such a Government servant. It follows that if the pensionary benefits of the petitioner are to be computed in accordance with the Rules, Rule 49 would be applicable.

10. Rule 35 states that a superannuation pension shall be granted to a Government servant who is retired on his attaining the age of compulsory retirement. The heading of the rule "Superannuation pension" reflects the contents of the rule. The rule, therefore, deals with a situation where a Government servant retires in the normal course, namely, on attaining the age of superannuation. That age is considered as the date of compulsory retirement. Rule 36 which has a heading "Retiring pension" provides that a retiring pension shall be granted to a Government servant who retires, or is retired, in advance of the age of compulsory retirement, in accordance with the provisions of Rule 48 or Rule 48-A of the Rules, or Rule 56 of the Fundamental Rules or Article 459 of the Civil Service Regulations. We are not concerned with that part of the rule which is contained in (b).

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A bare reading of the rule indicates that it is confined to a pre-mature retirement. It emphasises upon the retirement of a Government servant in advance of the age of compulsory retirement, the age of compulsory retirement being the date on which the Government servant attains superannuation. Thus it is clear that Rule 35 is confined to retirement of a Government servant on his attaining the age of compulsory retirement whereas Rule 36 talks of retirement different to the one referred to in Rule 35, namely, a retirement taking place before the attainment of the age of compulsory retirement. Rule 37 which has the heading "Pension on absorption in or under a corporation, company or body" minus the proviso thereto, as material, posits that a Government servant who has been permitted to be absorbed in a service or post shall, if such absorption is declared by the Government to be in the public interest, be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits which he may have elected or deemed to have elected, and from such date as may be determined in accordance with the orders of the Government applicable to him. We have already stated that the petitioner had been permitted to be absorbed in IRCON, a corporation or company which fulfils the requirement of Rule 37. We have also stated that the petitioner is deemed to have retired on 12.3.1984. There is no dispute that the absorption of the petitioner has not been declared to be in the public interest. By the use of the

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expression "deemed", the date of the retirement of the petitioner from the Railways has been fixed and that is the date of his absorption in IRCON. The retirement of the petitioner from service, therefore, was automatic and instantaneous upon his absorption in IRCON. The retirement came into existence on its own force on account of the operation of the fiction created in the rule under reference. The nature of the retirement, therefore, was compulsory. The purpose of Rule 37, as is discernible from the heading, is payment of pension on absorption.

11. Normally, upon the absorption of a Government servant in a post or service under a different employer from a certain date, he should cease to be a Government servant. His relationship with the Government should be severed and his status as a Government servant should come to an end. Therefore, the question of his retiring from Government service should not arise. However, Rule 37 makes a departure from the normal rule and that too for a limited purpose that being the payment of retirement benefits. For giving that benefit, the rule making authority had to lay down a uniform policy for general application. That is precisely what it has done. It has provided that for the purpose of retirement benefits, a Government servant should be deemed to have retired in accordance with the Rules so that Rule 49 may be made applicable to his case.

12. The rule making authority should be deemed to have the knowledge that normally

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another fiction is not imported by the courts for giving effect to a fiction created by a statute. The argument of the petitioner really is that deemed retirement in Rule 37 should include the pre-mature retirement as envisaged in Rule 48-A. We have already indicated that the scheme of the rule is that ~~there is~~ retirement which comes into existence on attaining the age of compulsory retirement and there are varieties of pre-mature retirements as contemplated in Rule, 48, Rule 48-A, Rule 56 of the Fundamental Rules and Article 459 of the Civil Service Regulations. Rule 48-A contemplates a positive and overt act on the part of a Government servant. On the other hand, in Rule 37 no positive or overt act either on the part of the Government or the Government servant is required to bring into existence a retirement. From the event of the absorption itself springs the retirement of a Government servant from his erstwhile service. If the rule making authority had intended to include in the fiction a voluntary retirement as well it would have said so clearly.

13. We may now consider Rule 48-A. The petitioner cannot take an advantage of the same because the type of retirement contemplated therein is not countenanced in Rule 37. Moreover, it is nobody's case that the petitioner ever gave any notice much less three month's notice to the appointing authority to retire him from service and such a notice was accepted by the appointing authority. The giving of the notice and its acceptance are conditions precedent to the

applicability of the said rule. Sub-rule(6) states, that Rule 48-A shall not apply to a Government servant who retires from service for being absorbed permanently in an autonomous body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement. This sub-rule is self-explanatory. It prohibits a Government servant who intends to be permanently absorbed in an autonomous body or Public Sector Undertaking to which he is on deputation from seeking voluntary retirement. The sub-rule does not either expressly or impliedly say that a Government servant who has not sought a voluntary retirement by complying with the requirements of Rule 48-A would be deemed to have voluntarily retired if he is considered to have retired from Government service on the ground that he is permanently absorbed in an autonomous body or a Public Sector Undertaking. To put it differently, it cannot be argued on the basis of the contents of the said sub-rule that a Government servant who is deemed to have retired within the meaning of Rule 37 would also be deemed to have retired within the meaning of Rule 48-A.

14. This OA fails and is dismissed. There shall be no order as to costs.

B.N. Dhoondiyal
(B.N. DHOUNDIYAL)
MEMBER (A)

S.K. Dhaon
(S.K. DHAON)
VICE-CHAIRMAN

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