

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 617 of 1987
 T.A. No.

199

DATE OF DECISION 21.2.92

R.L. BANGIA

Petitioner

Shri R.K. Kamal

Advocate for the Petitioner(s)

Versus

Union of India & Others

Respondent

Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. P.S. Habeeb Mohamed, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh Vice-Chairman (J).)

JUDGMENT

This judgment shall also govern the disposal of OA Nos 618/87, 1460/87, 1897/89, 1468/87, 963/89, 1051/89, 1052/89, 1053/89,

/and 1335/89, 1021A/89, 1021B/89 and 1021C/89.

The prayers in all these O.As are common, that is, the impugned orders passed by the respondents on different dates with regard to these applications (Annexure A-I dated 3.3.86 in this case) be quashed and set aside. They have also prayed for the relief that the respondents be directed to allow permanent absorption of the applicants in the RITES from the date of the actual acceptance of their resignation by the competent authority in public interest.

2. As a common question of law i.e. "retirement/acceptance of resignation for the purpose of permanent absorption in Public Sector Undertakings cannot have a retrospective effect" arises in

617/87

all these O.A.s, hence this judgment shall also govern O.A. Nos. 617/87

(Manoranjan Sinha), 1460/87 (J.S. Bammi), 1897/89 (Inder Pal Singh), 1468/87 (Dharmvir Dhir), 963/89 (Jai Chand Joshi), 1051/89 (J.N. Kohli), 1052/89 (J.P. Vaish), 1053/89 (Dharam Raj Roy), 1000/89 (D.P. Jain), 1032/89 (Vishnu Dutt Sharma), 1001/89 (V.D. Keshwani), 1335/89 (S.C. Dixit), 1021/89 (Brahmanand & Ors.), 1664/89 (P.N. Sharma), 1335/89 (S.C. Dixit), 1807/89 (K.V.S. Murthy) and 1028/90 (V. Narayanan) / Respectively, 1021A/89 (Sewa Singh), 1021B/89 (Purshotam Kapoor) and 1021C/89 (O.P. Vyas).

Following are the impugned orders which are required to be quashed are dated

3.3.87 (in the present case), 24.3.87, 19.2.85, 26.89, 4.11.84, 12.1.87,

19.4.86, 22.2.85, 21.8.85, 5.3.87, 22.1.86, 26.5.86, 9.1.86, 3.3.87, 3.3.87,

9.1.86, 3.3.87, 31.3.87, 15.5.86 and 4.3.86 and 17.1.86, 3.3.87, 3.3.87, 9.1.86 & 3.3.87.

3. The applicant joined the Northern Railway as Guard 'C'

on 18.12.61 and was selected as Traffic Apprentice on 18.12.61 and was then

promoted as Traffic Inspector in 1973 and was further promoted

to the grade of Rs. 700-900 in 1978. He was promoted on ad hoc

basis as Class Officer in December 1981. On 21.12.81, the applicant

was sent on deputation to Rail India Technical and Economic Services

Limited (for short 'RITES'). This public sector undertaking styled

as RITES was established by the Government of India in the middle

of 1974. As the said undertaking needed specially skilled persons

for manning key posts therein, it needed the services of senior technical

persons on deputation. The applicants went on deputation to

RITES, New Delhi. They joined different posts. They remained

on deputation to the RITES since then with their ten with the Railways

absorbed ways. The applicants expressed their willingness to get permanently

in the RITES before their period of deputation was over, hence they

submitted their resignations to the parent Department of Railways,

but the same remained pending for acceptance. During the

pendency for acceptance, the applicants remained linked with the

Railways Department, but working on deputation in the RITES period

The deputation of the applicant continued beyond the deputation/

1. 3. 1984 and he was told that it would be treated as 'unauthorised' and such attendant consequences unless option is given by the

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applicant to get absorbed from the date of the completion of the sanctioned tenure. Although the services of the applicant were continued in the RITES beyond the sanctioned deputation period, the Railway Board was treating the period as "unauthorised with attendant consequences" and this was conveyed to the applicant.

Hence, the applicant signed a declaration form as supplied by the RITES. After signing this declaration on 28.7.86, the applicant continued his services in the RITES awaiting acceptance of his resignation

and absorption orders in RITES. He learnt that the resignation was accepted on the file by the competent authority in the first week

of March, 1987. The applicant after signing the declaration on

28.7.86, received the impugned order dated 3.3.87 conveying sanction of the President for permanent absorption of the applicant in RITES

with back /i.e. from 22.12.84. The RITES also did not issue the

absorption orders before the sanction of the absorption of the applicant by the President in public interest. It is this impugned order

ordering the absorption of the applicant from back date, i.e., 22.12.84

which is under challenge in the present O.A. In other OAs, the

dates of impugned orders and back dates are different. However,

as the principle is to be laid down, they contend that instructions

contained in para 5 of Annexure A-IV clearly lay down that

"the orders of permanent absorption should be issued only

after the resignation of the Railway servant has been

accepted by the Government and with effect from the

date of such acceptance."

The applicants, therefore, contend that the resignation should not have been accepted from back date, but should be deemed to have been accepted only from the date of acceptance.

The respondents on notice appeared and filed their return opposing the facts contained in all these OAs. They also raised

a preliminary object in some of the OAs as being barred by limitation. They justified the orders passed by the respondents, and

Court also held that if a person has tendered his resignation, he is entitled to withdraw his resignation and get back his previous status. The respondents contended that there is nothing wrong or against the rules or principles of law in accepting the resignation with retrospective effect. They also contend that it was the request of the applicants for permanent absorption in the RITES and as the RITES has raised an objection with regard to this absorption with back date, the grievances of the applicants are baseless. They also maintained in their return petition that the applicants unconditionally opted for permanent absorption in the RITES which was approved finally. Hence, the applicants are estopped from going back from their previous commitment.

5. Shri R.K. Kamal learned counsel appeared on behalf of the applicants and submitted at length his arguments. Somehow or other, the learned counsel of the respondents were not available on the date of hearing.

It was directed that they may file their written argument and hence it was directed that they may file their written argument.

6. The question to be adjudicated was the subject matter of consideration in the case of J. Sharan vs. Union of India in O.A. No. 364/86. This was also the subject matter of consideration by

I.C. Sudhir, R.L. Dhawan, Inderjit Sharma, O.P. Kshatriya and O.K. Moolji filed their written arguments. We have carefully considered their contentions and proceed to adjudicate the matter in hand.

6. The question to be adjudicated was the subject matter of consideration in the case of J. Sharan vs. Union of India in O.A. No. 364/86. This was also the subject matter of consideration by

different Division Benches of this Tribunal in O.A Nos. 109/86, 108/86, 110/86 and 111/86 (M.P. Singhal and others) dated 18.9.87. In view

of these decisions, the question need not detain us any more. The orders which were passed in different OAs, the effective dates of

retirement are being given below.

In O.A. No. 617/86, the effective date of retirement was 22.12.84. Similarly, respectively in all the other OAs, the dates were to be 11.10.85, 7.12.82, 22.4.85, 22.1.82, 4.1.86, 8.1.85, 1.11.83, 7.6.83, 4.12.84, 4.6.85, 11.12.85, 28.12.84, 1.6.86, 7.9.85, 12.4.85, 1.5.86, 17.5.84, 15.1.84 and 1.1.84.

In the case of J. Sharan vs. U.O.J (supra), it has been held that such orders as passed by the respondents in Annex A-1 would not have retrospective effect being purely administrative in nature.

It was further observed that no explanation for inordinate delay on the part of respondents in passing the orders of the respondents, coming. It would be seen that in their returns, the respondents

in these matters have also not assigned any valid reasons for having passed the orders after inordinate delay off the submission of the resignations. The respondents contended that it was an administrative

order. It is settled by now, that administrative orders, if passed in a manner which is not based upon the principles of natural justice and equity, cannot be said to be good orders. Administrative orders are not immune from judicial review and while examining all these impugned orders, we do not find any justification on the part of the respondents for having passed the orders to be effective retrospectively respectively.

In the case of S.K. Sharma vs. U.O.I (OA 615/87) decided on May 5, 1989, a Division Bench of this Tribunal has also placed reliance in the case of J. Sharan (supra) and directed that the applicant's date of retirement from the I.A.S. and his permanent absorption in HUDCO shall be taken as 28.6.1985 and he shall be entitled to all retirement benefits on this basis. They further directed that the intervening period shall be treated as one on deputation on the usual terms and conditions.

In the case of P.M. Sreedharan vs. U.O.I. & Ors. (OA 370/88), decided on 1.6.90, another Bench of this Tribunal following the principles of J. Sharan (supra), laid down the following ratio:

"That the order passed by the respondents was purely an administrative order and cannot operate retrospectively to the prejudice or detriment of the applicant."

They further laid down that the applicant must be deemed to have continued with the RITES till his permanent absorption. It was further directed that the ten of the applicant on his cadre post

in the parent post stood terminated with effect from the date of the administrative order.

In another case U.B. Singh vs. U.O.I. & Ors (OA 616/87) (decided on 7.6.1991) in which one of us was a party (Hon'ble Shri Justice Ram Pal Singh) also placed reliance on the decision in J. Sharan (supra)'s case and made the observations that an administrative order cannot be directed to operate retrospectively to the prejudice of the applicant. It was also laid down that the applicant must be deemed to have continued on deputation with the RITES till his final absorption. It was further laid that the lien of the applicant from the parent department stood terminated only from the date when the resignation by the parent department was accepted. It was further laid down that orders of acceptance of resignation, i.e., the administrative orders, cannot operate retrospectively.

A similar view was taken in another Bench decision in the case of Mohd. Salim Akhtar vs. U.O.I. (OA 330/89), decided on 26.11.1991.

7. We are, therefore, of the opinion that the impugned orders which were passed by the respondents on different dates in this case on 3.3.87 are the dates from which the resignation became effective. The letter of resignation becomes effective only from the date of the actual acceptance of the resignation by the competent authority. Hence, the resignation of these applicants became effective on the dates they were actually accepted by the competent authority and not from the date from which they were directed to operate retrospectively. We, therefore, set aside the impugned orders (Annex A-1) in this case and other impugned orders in other OAs to the extent that they do not operate retrospectively and shall be operative only from the dates the resignations were actually accepted and it is only from these dates that the applicants' lien stood terminated in the parent department and it is only from these dates that the absorption of the applicants in the RITES became final.

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(100% e-signature)

Lien cannot be terminated retrospectively unilaterally by the cadre controlling authority. (Law of 1992 (A.Y. not before))

8. **8.** The respondents have objected that O.A. Nos. 963/89, 1051/89, 1052/89, 1953/89, 1012/89 and 1028/90 are barred by limitation. It appears that on this ground alone, the applicants in these OAs should not be deprived of the benefits they are to get by the previous judgements of this Tribunal and also by the judgement in this case. Technicalities cannot be permitted to block the flow of justice.

9. Consequently, we allow these OAs and direct the respondents that the resignations accepted shall be deemed to be operative only from the date of the actual acceptance of the resignations and not retrospectively. This order of the retrospective operation of the impugned orders is being quashed and the respondents are directed to consider the applicants for permanent absorption in the RITES or, after the actual date of acceptance of their resignation from the parent department and give them all the consequential benefits, including pay fixation, promotion in accordance with rules and regulations and arrears of pay and allowances, together with simple interest at the rate of 12% per annum till the date of the absorption in the RITES. We further direct the respondents to comply with these directions within a period of three months from the date of receipt of a copy of this judgment. The parties, in the facts and circumstances of the case, shall bear their own costs.

(P.S. HABEEB MOHAMED)

MEMBER (A)

(RAM PAL SINGH)

VICE-CHAIRMAN (I)

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