

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(8)

O.A. No. 1017 of 1989
T.A. No.

199

DATE OF DECISION 5.2.92

M.K. Sharma

Petitioner

Shri G.D. Bhandari

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri P.S. Mahendru

Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. I.P. Gupta, 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

The applicant joined Northern Railways as a Fireman Grade 'A' after being selected by the Railway Service Commission and presently holds lien on substantive post of a Driver Grade 'A' Special on the Allahabad Division of Northern Railways. He rose to the post of Driver 'A' Special Grade and then was promoted as Loco Inspector with effect from 1.1.76 on the Northern Railway. He was selected as Assistant Project Manager and was sent on deputation to Indian Railway Construction Company, hereinafter referred as IRCON, New Delhi. The applicant joined IRCON on 19.4.82 and since then has been continuously holding the post of Asstt. Project Manager. His initial deputation to IRCON from Northern Railway was for a period of one year, effective from the date of joining i.e. 19.4.82, but he was permitted to continue to work there. During

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for absorption

this period, his willingness or option/was not obtained nor he was repatriated to the Railway on a substantive post. Respondents No. 3, by their letter dated 20.11.84, conveyed their decision to absorb the applicant in the IRCON with effect from 1.9.84 and he was asked to submit his request for the deemed retirement from Railways on a prescribed proforma. In consequence, the applicant submitted the same. The applicant submitted an application on 3.2.87 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. Protracted correspondence and dilatory tactics adopted by the respondents prevented them from taking any decision. He remained submitting his representations to the Railways and also prayed for benefit of the 4th Pay Commission's Report. At last, Annexure A-1 dated 5.1.89 has been issued by the respondents whereby the applicant has been ordered to have been on deemed retirement with effect from 19.4.85. He, therefore, in this application filed under Section 19 of the Administrative Tribunals Act of 1985, prays for quashing Annexure A-1 dated 5.1.89 and also prays for pensionary benefits from Northern Railways. Though other prayers have also been made in the main O.A., but Shri G.D. Bhandari, at the time of the arguments, withdrew all other prayers except the one mentioned hereinabove. As he has not pressed for other reliefs, we are required to consider whether the resignation can be accepted with retrospective date or not.

2. Respondents on notice appeared and filed a vague return. Shri P.S. Mahendru, counsel for the respondents, was also heard.

3. By now it has become settled in a catena of judgments of this Tribunal that resignation cannot be accepted and cannot operate from back date i.e. it cannot operate retrospectively. In the case of J. Sharam vs. Union of India (O.A. No. 364/86) and also in O.A. Nos. 109/86, 108/86, 110/86 and 111/86 (decided on 18.9.87), this was the subject matter. In all these cases, it has been decided that retirement cannot be directed to be effective with retrospective

effect. In J. Sharan (supra), the following ratio has been laid down:

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

In the case of U.B. Singh vs. Union of India & Others (OA No. 616/87) decided on 7.6.91, in which one of us (Hon'ble Shri Justice Ram Pal Singh) was a party, after laying reliance on the decision of J. Sharan (supra)'s case observed that an administrative order cannot be directed to operate retrospectively to the prejudice and detriment of the applicant. It was also laid down in this case that the applicant must be deemed to have continued on deputation with the RITES till his final absorption. It was further laid down 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 clearly mentioned in this case that the acceptance of the resignation which was an administrative order cannot operate retrospectively. The letter of resignation becomes effective only from the date of the actual acceptance by the competent authority. Hence, resignation of the applicant will become effective only on that date on which it was actually accepted by the competent authority and that it will not be operative retrospectively.

4. In view of this settled ^{position} ~~order~~ of law, we allow this O.A. and direct the respondents that the resignation of the applicant shall be deemed to be operative only from the date of the actual acceptance of the resignation and not retrospectively. Hence, in this case, as the resignation was accepted on 5.1.89, the applicant shall be deemed to have retired only on 5.1.89 and not with retrospective effect i.e. from 19.4.85. As the order of retrospective operation of the impugned order is being quashed, the respondents are directed that the parent department shall give consequential pensionary benefits, including pay fixation, arrears of pensions due to the applicant according to rules with 12% per annum interest on the amount

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due. We further direct that the respondents shall comply with these directions within a period of three months from the date of receipt of a copy of this judgment. Parties shall bear their own costs.

I.P. Gupta
(I.P. GUPTA) 5/2/92
MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)
VICE-CHAIRMAN (J)

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