

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.1077 of 1989

This 25th day of March 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

A.D. Jagannathan,
Deputy General Manager,
Rail India Technical & Economic Services Ltd.,
New Delhi.

Applicant

By Advocate: Shri R.K. Kamal

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Union of India, through:

1. The Secretary,
Railway Board, Rail Bhavan,
Rafi Marg,
New Delhi.

2. The General Manager,
Integral Coach Factory,
Madras - 38.

Respondents

By Advocate: None present

O R D E R

(By Hon'ble Mr. B.K. Singh, M(A)

This application has been directed against the impugned order No.86/E(0)II/16/1 dated 13.4.89 issued by the Secretary, Railway Board read with order No. PB/82/1370 dated 3.12.1985 issued by Dy. Chief Personnel Officer/WS, I.C.F., Madras. These are marked as annexures A-2 and A-1 respectively of the paper-book.

2. The applicant was absorbed in the Rail India Technical & Economic Services Ltd. (RITES) on the basis of option 1 by him.

Prior to this he was holding a civil post under Northern Railway where he from 1/4 went on deputation to RITES for a period of one year w.e.f.

31.10.80 which was further extended for another two years, i.e. from 1.11.81 to 31.10.83. The applicant submitted his resignation w.e.f.

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1.11.83 in May 1985 and he was permanently absorbed in the RITES from 1.11.83. RITES proposed to absorb him permanently in public interest and on the basis of his written consent he was permanently absorbed. The applicant sent in his resignation to his parent office only on receipt of reminders from the Railway Board, prospectively in May 1985 after he had been absorbed in RITES. The applicant requested the Railway Board to accept his resignation w.e.f. 1.11.83. RITES had already communicated their decision of absorption vide their letter dated 17.5.85. Accordingly the Railway Board issued an office order dated 3.12.85, mentioned above, accepting the applicant's resignation from Northern Railway Service w.e.f. 31.10.83 (afternoon).

3. The applicant has sought the following reliefs:

- (i) to declare the retrospective effect given to retirement/absorption orders contrary to the principles of law;
- (ii) to direct respondents to treat his retirement/absorption orders to be effective from the actual date of issue of its acceptance with all consequential benefits.

4. A notice was issued to the respondents who filed their counter and contested the application and reliefs prayed for.

5. Heard the learned counsel, Shri R.K. Kamal, for the applicant. No one was present on behalf of the respondents. We perused the record of the case. A perusal of the record will show that the applicant initially ^{was} sent on deputation to RITES. Prior to this he was holding the post of Deputy Shop Superintendent/Fitter/G.I. The deputation period was for one year

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w.e.f. 1.11.80 to 31.10.81. However, this period was extended on the request of the RITES for a period of two years which expired on 31.10.83. RITES proposed to absorb the applicant permanently in public interest after obtaining the written consent of the applicant. It is true that after the receipt of a copy of the absorption letter, Railways wanted the applicant to resign from the post he was holding prior to his deputation. In response to Railway's demand he submitted his resignation only in May 1985 with a request to accept the same w.e.f. 1.11.83, i.e. from the date of his absorption in RITES. the learned counsel for the applicant argued that the resignation of the applicant was accepted on 3.12.85 but it was made effective retrospectively, i.e. from 1.11.83 when the applicant was absorbed. That the applicant was permanently absorbed in RITES on the expiry of the extended term of deputation, is conceded by the learned counsel for the applicant. He did not resign suo moto. It was only after the Railways sent reminders to RITES in response to communication of permanent absorption of the applicant and requested the RITES to call for his resignation. Procedurally, it was totally wrong on the part of the applicant and also on the part of the RITES to absorb him without submission of the resignation letter and its acceptance by the Railway authorities. It is not understood under what circumstances the applicant did not resign his job when he opted for permanent absorption. He should have done it the same day on which he was absorbed in RITES. The Railway Board on the basis of delayed resignation made it effective from 31.10.83 which was the last day of his extended period of deputation so that he could get the benefits due to him till that day from the parent employers. He had been absorbed in the RITES w.e.f. 1.11.83 and the order of the Railway Board dated 3.12.85 only regularised his absorption w.e.f. 1.11.83.

6. This case is fully covered by Rule 37 and 37-A of CCS (Pension) Rules, 1972 which are quoted below:

Rule 37 "A Government servant who has been permitted to be absorbed in a service or post in or under a corporation or company wholly or substantially owned or controlled by the government or in or under a body controlled or financed by the Govt. shall, if such absorption is declared by the Govt. 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."

Rule 37-A: "(1) Where Government servant referred to in Rule 37 elects the alternative of receiving the (retirement gratuity) and a lump sum amount in lieu of pension, (he shall, in addition to the retirement gratuity,) be granted:

(a) on an application made in this behalf, a lump sum amount not exceeding the commuted value of one-third of his pension as may be admissible to him in accordance with the provisions of the Civil Pension (Commutation) Rules; and

(b) terminal benefits equal to the commuted value of the balance amount of pension left after commuting one-third of pension to be worked out with reference to the commutation tables obtaining on the date from which the commuted value becomes payable subject to the condition that the Government servant surrenders his right of drawing two-thirds of his pension."

In view of the aforesaid rules and in view of his having accepted the lump sum in lieu of pension, gratuity and other terminal benefits, the applicant is totally barred from exercising a fresh option since the whole transaction in his case is complete.

7. The learned counsel for applicant quoted the ruling in the case of OA No.617/87, R.L. Bangia Vs. Union of India & Ors. decided on 21.2.92, AIR 1992 (1) 704 in which a host of other OAs were also decided. The facts of the case in this OA are distinguishable from the facts of the present case. The facts in the above mentioned cases decided by a division bench of Principal Bench, CAT, are mentioned below:

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"The applicants expressed their willingness to get absorbed permanently in the RITES before their period of deputation was over, hence they all submitted their resignations to the parent Department of Railway, 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. The deputation of the applicants continued beyond the deputation period i.e. 21.12.84 and he was told that it would be treated as "unauthorised with attendant consequences" unless option is given by the 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 29.7.86, received the impugned order dated 3.3.87 conveying sanction of the President for permanent absorption of the applicant in RITES with back date 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 ~~on~~ ~~on~~ from back date i.e. 22.12.84 which is under challenge in the present OA. 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."

8. In the present case the applicant did not approach the Railway Authorities during the course of his deputation for absorption. He remained totally silent and he quietly got himself absorbed on the basis of his option and it is only Railway authorities who subsequently on receipt of communication from the RITES that they have decided to absorb him w.e.f. 1.11.83, as parent employer demanded resignation and consequently the resignation was sent by the applicant with a request that it may be made effective from 1.11.83 and in pursuance of this communication the applicant got all his terminal benefits and also converted his pension into lump sum amount. Thus the ratio established in the aforesaid judgment will not hold good in this case at all. The applicant also would be barred by the American doctrine of ~~Promissory~~ Estoppel since in his case the entire transaction was complete when he



exercised his option for absorption and was absorbed in deference to with his option and consent ~~to~~ RITES. The Railways did not threaten to take any penal action against the applicant as was the case in the previous applications. In those cases the applicants were threatened with consequences of unauthorised deputation which is not the case with the applicant.

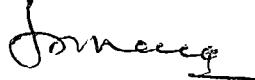
9. The judgment in the case of M. Srinivasan was a judgment in personam and it was not a judgment in rem to be applied in all other cases. The Railway Board instructions contained in their letter No.86/E(O)II/16/1 dated 13.4.89 were specifically issued in the case of M. Srinivasan in consequence of the judgment of the Principal Bench, CAT, dated 18.9.87 on the basis of petition filed by Srinivasan. These two cases are distinguishable in facts as well as in law.

10. Thus it is clear that the resignation of Shri Jagannathan, the applicant, was accepted w.e.f. 31.10.83 on his own request made in May 1985. The picture presented by the applicant that there was delay in accepting his resignation or that it was accepted retrospectively with detriment to him is false and misleading. He submitted his resignation only on demand from the Railway Administration and there was no delay at all taking into consideration the facts and circumstances of the case. The RITES absorbed the applicant permanentl w.e.f. 1.11.83 on the basis of his unconditional option for absorption. He cannot now be permitted to agitate the matter before the Tribunal just to gain some pensionary benefits or some more amount in the form of lump sum which he had already accepted along with other terminal benefits.

11. Since the applicant's case is fully covered by Rule 37 and 37-A of CCS (Pension) Rules, 1972 and when there are mandatory provisions and the applicant has already exercised his option for pensionary benefits i.e. lump sum amount in lieu of pension along with other terminal benefits, under Rule 37 and 37-A, CCS(Pension) Rules, he cannot be permitted to raise the matter now for any other relief, since in his case all transactions are complete on the basis of his own option.

12. Thus, in view of the foregoing observations, the application is devoid of any merit or substance and accordingly is dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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