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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN. NO. DA 370/88

Date of decision: 1-6-90

Shri P. M. Sreedharan Applicant

vs.

Union of India & ors. Respondents

CORAM: THE HON'BLE MR. P. K. KARTHA, VICE CHAIRMAN(J)
THE HON'BLE MR. D. K. CHAKRAVORTY, MEMBER(A)

For the Applicant Shri G.N.Oberoi,
Counsel.

For the Respondents Shri D.N.Mooiiri,
Counsel.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?

(The judgement of the Bench delivered by Hon'ble Mr. D. K. Chakravorty, Administrative Member)

JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who was ^aLascar under the Executive Engineer(Construction) ^BSouthern Railway, Saklaspur, has prayed for setting aside the order dated 29.8.1985 accepting ^{his resignation/}voluntary retirement ^Bfor permanent absorption in the Rail India Technical and Economic Services Ltd.(for short RITES) with effect from 19.3.1983 and the letter dated 21.1.1987 regarding settlement of dues. He has also sought for a direction for treating him to be in railway employment till the date on which the administrative approval by the competent authority for absorption in the RITES was conveyed and ^{for}grant of interest at the rate of 12% per annum on the delayed ^Lpayments of pension/gratuity and other terminal benefits.

- ^B 2. The applicant was originally appointed as casual labour on daily wages in January 1955. He was

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posted as Lascar under the construction unit of Southern Railway at Saklaspur with effect from 4.3.76. Subsequently he was given retrospective confirmation from 1-1-76 with refixation of his pay from 1.4.73 onwards. While he was working as officiating Works Mate in the scale of Rs.260-400 on ad hoc basis, he was transferred on deputation to the RITES under order dated 4-2-80. In the order dated 19.3.80 relieving the applicant, it was mentioned that his deputation will be subject to the conditions/^{as} laid down in the Ministry of Finance letter dated 7.11.75.

3. In his option letter dated 12.8.84 the applicant gave his willingness for being considered for absorption in public interest in the RITES for the post of Technical Assistant in the grade of Rs.425-700. After protracted exchange of correspondence the General Manager, Southern Railway (Respondent No.1) conveyed his approval for permanent absorption of the applicant in the RITES under his letter dated 29.8.85 with/^{retrospective} effect from 19.3.83. This was followed by letter dated 8-11-85 for processing the settlement papers of the applicant. The applicant requested for extension of the date of his retrospective absorption by 12 days i.e. upto 1.4.1983 so that he may be eligible for pensionary benefits. The applicant pointed out that/^{while} he had given his option in August 1984 the first reference by the RITES for processing his absorption was made/^{only when} more than two years had elapsed after the period of deputation of three years came to an end on 19.3.83.

Despite many reminders from the applicant and exchange of ^{several} letters, the settlement of dues of the applicant could not be expedited. It was only through the impugned letter dated 21.1.87 that he was told that he was not eligible for any pensionary benefits as he had put in only 7 years of service. This was challenged by the applicant through his letter dated 19.9.87 on the ground that his service has to be reckoned from 1.4.1973.

4. In support of his prayer for quashing of ^{two} the/impugned orders and grant of terminal benefits with interest, the applicant has mentioned, inter alia, that there was inordinate delay in initiating ^{his} the question of/permanent absorption; the RITES continued to send ^{and that} foreign service contributions till 1985;/his lien on the substantive post held by him cannot be terminated without the consent of the competent authority which was conveyed to him only in August 1985. He has cited the decision of the Tribunal in OA 364/86(Sh. J. Sharan Vs. Union of India & others) dated 9.9.87 dealing with the question of change in the date of absorption. He has also cited the decision of the Supreme Court in ^{the} State of Kerala & ors. ^{M. Radmanabhan Nair} vs. ^{vs.} (AIR 1985 SC 356) for claiming interest at the rate of 12% per annum for culpable delay in payment of pension/gratuity and other terminal benefits.

5. In the written statement submitted on behalf of the respondents, a preliminary objection has been taken that the application is time barred and not maintainable on that count. Having accepted his absorption with the RITES with effect from 19.3.83, the applicant cannot raise any claim for pensionary benefits because of the non-existence of cause of action at all. The applicant's

promotion in the railways was purely an ad hoc measure. If he were repatriated to the railways he would have been posted in the substantive capacity as Lascar. The obvious reason for challenging the retrospective absorption is to get the benefit of settlement of dues which would not have been permissible to him. The applicant is not at all entitled to any of the reliefs claimed by him and , therefore, the application is liable to be dismissed.

6. We have heard Shri G.N. Oberoi, the learned counsel for the applicant, Shri O. N. Moolri, the learned counsel for the respondents and have gone through the records of the case carefully.

7. We do not find any validity in the preliminary objection taken by the respondents that the application is time-barred and is not maintainable on that count. The application is primarily directed against order dated 21-1-87 by which the applicant was told for the first time that he is not eligible for any pensionary benefits. The applicant had challenged this order through his application dated 19.9.87 and on not having received any reply thereto, he filed the present OA in the Tribunal on 12.2.88.

8. This case ^{is} squarely covered by the decision of the Tribunal in OA 364/86(Sh.J.Sharan Vs. Union of India & ors) dated 9.9.87. Following the ratio of the said decision, we hold that the order dated 29.8.85, which is a purely administrative order, cannot operate retrospectively to the prejudice or detriment of the applicant . The applicant must be deemed to have continued on deputation with RITES till his final absorption. Accordingly we hold and direct that the lien of the applicant on his cadre post in the parent department stood terminated with effect from the date

of the administrative order dated 29.8.85. The impugned order dated 21.1.87 is quashed and set aside. The applicant shall be entitled to pension, gratuity and other terminal benefits including interest at the rate of 12% per annum with effect from the date of his absorption.

9. The above directions shall be implemented by the respondents within a period of three months from the date of receipt of this order.

10. In the circumstances, the parties will bear their own costs.

D.K. Chakravorty
(D.K.CHAKRAVORTY)
MEMBER

1/6/90

P.K. Kartha
(P.K.KARTHA)
VICE CHAIRMAN

1/6/90