

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 364/86
T.A. No.

198



DATE OF DECISION 9.9.87

Shri J. Sharan Petitioner

Shri Y. Prabhakra Rao Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

Shri M.L. Verma Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice J.D. Jain, Vice-Chairman

The Hon'ble Mr. Birbal Nath, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes.*
2. To be referred to the Reporter or not ? *yes.*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *no*

(Birbal Nath)
A.M.

J.D. Jain
(J.D. Jain)
V.C.

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
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Regn.No. OA 364/86

DATE OF DECISION 9.9.87

Shri J. Sharan

...Petitioner.

Versus

Union of India and others.

...Respondents.

For Petitioner: Mr. Y. Prabhakra Rao, Advocate

For Respondents; Mr. M.L. Verma, Advocate

CORAM: HON'BLE MR. JUSTICE J.D. JAIN, VICE-CHAIRMAN
HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

(Judgment of the Bench delivered by
Mr. Justice J.D. Jain, V.C.)

JUDGMENT:

This application has been filed by Shri J. Sharan, who joined the Indian Railway Service as a Mechanical Engineer some time in 1958 and he was promoted to higher positions from time to time. In 1974, the Government of India established a public sector undertaking called "Rail India Technical and Economic Services Limited" (RITES). It is stated that the Undertaking drew technical personnel from the Railways to man its staff, the petitioner being one of them. He was appointed as Chief Manager (Mech) in the grade of Rs.2500-2700 while on deputation. In or about 1983, the RITES thought of having permanent c a d r e in the senior and middle level

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management and they decided to absorb some of the officers who were on deputation with them from the Railways. So, they asked for the various deputationists including the petitioner to exercise their option whether they would like to be absorbed permanently in the RITES or not. The petitioner exercised his option in favour of permanent absorption in RITES in public interest as Director Technical on 18th July, 1984 and the same was duly forwarded by the Chairman of RITES under his covering letter dated 20th July, 1984. The Chairman, Shri P.N. Kaul gave his comments on the performance of the petitioner while recommending his case, inter alia, saying that the petitioner was ideally suitable for absorption in public sector. Later on, however, the petitioner sent another communication stating that he would like to be absorbed w.e.f. 1.1.85 to enable him to get full pensionary benefits of his then grade viz., Rs.2500-2700 in the Railways. This too was forwarded by the Chairman of the RITES with the remarks that he would like the marginal adjustment to be favourably considered. However, a reply came from the Secretary, Government of India, Ministry of Railways (Railway Board) that it would not be possible for them to recommend the proposal for absorption of the petitioner w.e.f. 1.1.85 and he could at best be absorbed w.e.f. 16.10.84 the date on which the petitioner had completed his sanctioned term of deputation. It was pointed out that the accommodation could not be granted to the petitioner as the Public Enterprises Selection Board felt that unless there was a general dispensation for permitting various officers on deputation to public enterprises to get permanently absorbed in such enterprises upto 3 months beyond the stipulated period of deputation, it would not be possible for them to

recommend the proposal of the Ministry of Railways for consideration. Thereupon the petitioner gave his option of absorption w.e.f. 16.10.84 on completion of three years tenure in RITES. However, he reiterated his request to be considered for absorption from the date of issue of the necessary orders by the Government. This too was forwarded by the Chairman of RITES for favourable consideration. Still later, the petitioner vide his letter dated 12.4.85 (Annexure-10) requested that his absorption in RITES be ordered at least w.e.f. 1.4.85 if not from the date of issue of necessary orders. He pointed out that consequent upon the revision in Pension Rules of Railway Servants w.e.f. 1.4.85, he stood to lose very heavily financially in pension if his absorption was ordered from the back date viz., 16.10.84. The said request too was forwarded by the Chairman of RITES to the Secretary, Railway Board with the recommendation that the absorption of the petitioner should be made w.e.f. 1.4.85. He emphasised that no formal orders for absorption of the petitioner had been received till then and he would suffer heavy pecuniary loss in case he was absorbed w.e.f. 16.10.84. He also pointed out that apart from having displayed professional acumen and excellence, the petitioner has the excellent rapport with their clients and had made a mark in promotion of Company's business. However, vide letter dated 19.7.85 (Annexure-12), the Secretary, Railway Board, informed the Managing Director of RITES that the Public Enterprises Selection Board had recommended permanent absorption of Shri J. Sharan w.e.f. 16.10.84. He further

(11)

~~xxxxxx~~ asked the Managing Director to ascertain from the petitioner whether he was prepared to get absorption on the said terms. It appears that the petitioner did not answer this query specifically and instead wrote on 29.8.85 (Annexure-14) that he was completing his fourth year of deputation on 16.10.85 and therefore, the term of his deputation be extended in view of the Department of Personnel having permitted deputation^{up} to a maximum of five years. So he asked for further deputation of one year so as to complete the full tenure of 5 years. The Managing Director of RITES recommended^{for} favourable consideration of this request vide his letter dated 29.8.85 (Annexure-16). He again emphasised that the petitioner had developed personal rapport with a number of top railway and Govt. officials in various countries where RITES operated and had been instrumental in securing a number of prestigious contracts. However, vide letter dated 18.2.86 (Annexure-17), the Secretary, Railway Board informed RITES that the Government of India had approved to absorb the petitioner permanently in RITES w.e.f. 16.10.84 and formal sanction would issue in due course in this behalf. On receipt of the said letter the petitioner reacted sharply and wrote vide his communication dated 24.2.86 (Annexure-18) that the order of his absorption be made prospectively from the date of the issue of the same and not

2

with effect from 16.10.84. He reiterated that the delay in issue of the orders for nearly 16 months had caused severe financial loss to him, apart from major changes in pensionary rules. He further pointed that similar concession of extending deputation had been given in some cases in order to give benefit of new pensionary rules w.e.f. 1.4.85 in other public sector undertakings and he referred to a specific case of Smt. Lalitha K. Raman, Junior Accounts Officer in this regard. Lastly, he concluded by saying that if his absorption could not be considered w.e.f. 1.4.85 he be repatriated to the Railways immediately cancelling the absorption order. This letter too was forwarded by RITES to the Secretary, Railway Board for favourable consideration as recommended earlier. It was again stressed that the petitioner had developed intimate rapport with a number of top officials in courties where they were operating and they would not like him to loose so heavily financially. In the alternative, it was suggested that if his request for postponing the date of absorption was not acceded to, he be taken back to the Railways in his parent cadre. However, nothing of the kind happened and vide order dated 14.4.86 (Annexure-20), the President accorded sanction for absorption of the petitioner permanently in RITES in public interest w.e.f. 16.10.84 on the terms and conditions stated therein.

3. The application is hotly contested by the respondent-Union of India. At the outset, they have raised a preliminary objection that this Tribunal has no jurisdiction to entertain and try this application inasmuch as the petitioner is an employee

BITES which is a public limited concern and in respect of which no Notification under Section 14 of the Administrative Tribunals Act has so far been issued. Further, the petitioner is alleged to be barred by the doctrine of estoppel as enshrined under Section 115 of the Evidence Act on the ground that having given his consent for absorption, the petitioner cannot backout of the same. However, the foregoing facts have not been disputed and it is contended that the order dated 14.4.86 of the President sanctioning absorption of the petitioner w.e.f. 16.10.84 is perfectly valid, it being an administrative order and there being no legal bar to an administrative order being issued with retrospective effect. They have pointed out that the Bureau of Public Enterprises, Department of Expenditure, Ministry of Finance vide their O.M. dated 26.2.69 (Annexure-I to the counter) had communicated that the government officers deputed to public enterprises should be asked to exercise the option between the two alternatives of (i) resignation from Government service and permanent absorption in the concerned public enterprise and (ii) reversion back to the parent cadre. It was further stipulated that the period of deputation to various public enterprises should not exceed three years. Later, however, the Bureau of Public Enterprises clarified in their O.M. dated 22nd September, 1972 (Annexure-II to the counter) that the term of deputation should not be extended beyond the stipulated tenure and the option orders be implemented most strictly and requests for extension of deputation beyond the prescribed limits under the orders, as a rule ^{be} turned down by the administrative machinery. Thus, according to them, the

option for absorption or reversion to the Railways had to be exercised before the completion of the sanctioned ^{time} tenure. However, extension of the ^{time} of deputation beyond the maximum stipulated period required prior orders of the Government on full justification as contemplated in O.M. dated 8.4.77 (Annexure-III to the counter). They further assert that under the policy of the Government one of the conditions of absorption was that no further liberalisation of pension rules would be extended to the officers who had been absorbed. Lastly, it is strongly contended that the petitioner continued in RITES ~~only~~ with a clear and unconditional option to get permanently absorbed. Since by its very nature the option exercised once is final, there was no scope to allow the petitioner to return to the Railways after he had been finally absorbed in the RITES. In other words, the petitioner was trying to nullify the option exercised by him unconditionally.

3. From the foregoing resume of facts, the crucial question which calls for determination is whether the petitioner having once exercised his option to be absorbed w.e.f. 16.10.84 in view of the letter dated 19.2.85 (Annexure-7) of the Secretary, Railway Board could resile therefrom and ask for his absorption from a prospective date viz., the date of the requisite sanction by the Government or in the alternative w.e.f. 1.4.85 so that he was saved from heavy financial loss, which he would have otherwise suffered on account of liberalised pension rules etc. Of course, the objection of the respondents regarding jurisdiction of this Tribunal has also to be considered.

4. As stated above, the contention of the respondents is that the petitioner being a permanent employee of the RITES which is a Central Public Sector Enterprise cannot seek redress under the Administrative Tribunals Act, 1985 because no notification under Section 14(2) has so far been issued by the Central Government. Reliance, in this context, has been placed on some decisions of this Court viz., U.K.Singh Vs. Union of India¹, Shri K.L. Seth Vs. Union of India & others², P.Chakraborty Vs. Union of India and others³, and Shri A.K. Mukerjee Vs. The Secretary, NCERT, New Delhi and others⁴. However, a perusal of the said cases would show that unlike the instant case, relief was sought in all of them against the concerned public undertaking or autonomous corporate bodies and not against the Union of India. On the contrary the specific plea of the petitioner is that he ought to have been absorbed w.e.f. the date of the Presidential order or at any rate with effect from 1.4.85 and not from 16.10.84 the date from which the sanction has been accorded by the President. The obvious effect of such a plea, if allowed, would be to postpone the absorption of the petitioner in RITES and he would be deemed to be a Railway employee and for that matter an employee of the Union of India till the date of his absorption. In essence, therefore, the relief sought is against the Union of India as a sequel to the challenge of the Presidential order referred to above. The mere fact that the respondents do not accept the petitioner as their employee

1. ATR 1986(1) CAT 171, 2. ATR 1986(1) CAT 174,
3. ATR 1986(1) CAT 327, 4. ATR 1986(1) CAT 334

with effect from 16.10.84 would not oust the jurisdiction of this Tribunal so long as the relief sought is specifically directed against the Union of India. Needless to say that the RITES have been all along supporting the cause of the petitioner and there is absolutely no controversy between the petitioner and the RITES. It is well settled that the jurisdiction of a court depends upon the nature of pleadings and the relief sought in the plaint/petition and it hardly matters what the ultimate outcome of the case would be. Hence, we overrule this objection.

5. As stated above, the critical question which looms large in the instant case is whether the consent accorded by the petitioner for his absorption in RITES w.e.f. 16.10.84 was irrevocable or he still had the right to alter the date of his absorption from a subsequent date. The answer to this question will naturally depend on various considerations including the jurial relationship of a government servant like the petitioner with his employer, viz., the Railways in the instant case. It is well settled that the position of a government servant differs from that of any other employee, in that, although the relationship originates in contract it ^{passes} into realm of status. This was explained by the Supreme Court in Roshan Lal Vs. Union and another¹, as follows:

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract.

1. AIR 1967 SC 1889

The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties".

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6. We have to see first of all if there is any rule or law governing the conditions of service of the petitioner vis-a-vis his right of absorption in the RITES, because if there is any such law or rule it would have prevailed over the general principles of the law of contract. Unfortunately, no statutory rule or regulations or departmental instructions issued by the Government in this behalf have been brought to our notice, excepting of course, from the policy letters issued by the Ministry of Railways (Railway Board) from time to time. The first one of these letters is dated 10th December, 1963 which refers ^{to} Rule No.2009, (F.R.14-A(a)) of the Indian Railway Establishment Code, Vol.II, which provides that a Railway Servant's lien on a post may, in no circumstance, be terminated even with his consent, if the result will be to leave him without a lien or a suspended lien upon a permanent post. The said rule further states that a Railway Servant's lien on a post shall stand terminated on his acquiring a lien on a permanent post outside the cadre on which he is borne. In view of this mandatory provision which has statutory force the Railway Board evolved the procedure for terminating the lien of a permanent servant who is transferred on a foreign service and is subsequently absorbed in the service of the foreign employer. In the aforesaid letter dated 10.12.1963, it ^{is} provided that the

- 11 -

obtaining of consent of the Railway servant to the termination of lien is necessary in certain circumstances where the Railway servant is to be confirmed in another post under the Government. However, such consent is not necessary in cases where the Railway servant ceases to be in Government employment and the proper course in such cases, where it is proposed to absorb him in non-Government service in public interest, would be to ask the Railway servant concerned to resign his appointment under the Government with effect from the date of such permanent absorption and the lien will stand automatically terminated with the cessation of Government service. It further states that such resignation from Railway service will be without prejudice to the entitlement of the Railway servant to the retirement benefits admissible under the Railway Board's letter No.F(P)60PN-1/43 dated 15.6.61, provided the transfer to the public sector undertaking or Government or semi-Government, Corporation is in the public interest. Another letter issued by the Ministry of Personnel, Public Grievances and Pensions, Government of India, to which our attention has been invited is dated 31st January, 1986 and it is on the same subject, namely, 'Appointment of Central Government servants in Central public enterprises on immediate absorption basis - terms and conditions of'. It lays down that a Government servant who has been selected for a post in Central public enterprise may be released only after obtaining and accepting his resignation from the Government service. It further

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states that in that event, all his connections with the Government will be severed on his release for appointment in an enterprise and he will not be allowed to revert to his parent cadre.

7. Relying on these two letters, the learned counsel for the petitioner has canvassed with considerable fervor that no resignation ^{having} ~~has~~ been obtained from the petitioner the question of his permanent absorption in RITES did not arise. However, this argument is stated to be rejected on the short ground that in the petition itself, no such plea has been raised and no such relief is sought, the only relief sought being issuance of a write and/or direction to the respondents to absorb the applicant from the date of issuance of sanction by the President and not from a retrospective date. Of course, consequential benefits including interest at ^{the} ~~at~~ bank rate on the amounts so found due till the date of payment have also been claimed. Since neither the applicant nor the respondents has taken the stance that the absorption of the petitioner in the RITES is still under consideration, we need not go into this aspect of the matter any more. Of course, we have to concentrate on ^{the} ~~the~~ question ^{as to} ~~when~~ the lien of the petitioner on his post in the parent department came to an end as a result of his absorption in the RITES. In view of the mandatory provision referred to above, it is manifestly clear that termination of the lien on the post held by the petitioner in the parent department must synchronise ~~synchronise~~ with his absorption in RITES and there cannot be any ^{interregnum} ~~gap~~ between the two.

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- 13 -

8. We now proceed to examine the facts of this case in the light of general principles of Law of Contract with a view to find out if there was a concluded contract between the parties which had the effect of terminating the lien of the petitioner on his post in the Railways. It bears repetition that the petitioner exercised his option in favour of permanent absorption in RITES on being asked if he was willing to be absorbed in RITES or not. The exercise of his option, in our view, constituted merely an offer to be considered for absorption, there being no corresponding obligation on the part of the RITES till then to absorb the petitioner. Likewise, there was no corresponding obligation on the part of the Railways to grant permission to him for permanent absorption in RITES. The whole thing was in the nature of a tripartite contract and the matter was still at the stage of negotiations. So it was for the Government to decide whether to grant ~~or~~ permission to the petitioner to leave government service for absorption in the RITES ^{or not.} As ^{of} for RITES' ^{be} course there can ^{be} no manner of doubt that they were all along not only willing, but very keen and even over zealous to secure the services of the petitioner, the Chairman of RITES landed to skies the qualities of head and heart of the petitioner whenever an occasion ~~arose~~ while recommending the case of the petitioner for absorption from a prospective date. Under Section 5 of the Contract Act, a proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. It is thus implicit under Section 5 that the proposer of a contract cannot

- 14 -

bind himself (unless by a distinct contract made for a distinct consideration) to keep his offer open for indefinite time and he is at liberty to withdraw the offer so long as its acceptance is not complete as against him. Section 6 lays down that a proposal is, inter alia, revoked by the communication of notice of revocation by the proposer to the other party. In other words, sub-section (1) of Section 6 appears to make it a condition of revocation being effectual that it shall be communicated by the proposer.

9. As will be noticed from the foregoing facts, the petitioner resiled from the earlier date of absorption, viz., 18th July, 1984 and switched over to the date 1.1.85 for absorption much before the acceptance of the proposal was communicated to him by the respondents. However, he expressed his willingness to be absorbed in RITES as Technical Director w.e.f. 16.10.84, i.e., the date on which he completed his sanctioned term of deputation, but he reiterated his request that his absorption from the date of issue of the sanction by the Government be considered. This was in March, 1985. However, ^{thereafter} soon ~~after~~, vide his letter dated 12.4.85 (Annexure-10), he once again resiled from his offer to be absorbed w.e.f. 16.10.84 and the Secretary, Railway Board asked for ascertaining from the petitioner whether he was prepared to get absorbed on the said terms. There was no reply or confirmation by the petitioner. On the other hand, he evaded the issue by asking for extension of his

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- 15 -

deputation for a full term of 5 years vide his letter dated 25.8.85. The RITES too recommended his extension of deputation for a full tenure of 5 years upto 15.5.86. However, the Government ^{did not} agree to the same and vide letter dated 18.12.86, they informed the petitioner that his absorption was approved w.e.f. 16.10.84 and formal sanction would issue in due course. However, the petitioner reacted very sharply to the said approval and intimated in no uncertain terms in his letter dated 24.2.86 that he be absorbed from 1.4.85 so as to enable him to avail of ^{the benefits of} liberalised pension rules etc. and in the alternative, he requested for his immediate repatriation ~~of his service~~ to the Railways cancelling the absorption order. He even cited some instances in which the extension of ^{had been} deputation/allowed. Notwithstanding this unequivocal stand by the present petitioner, the respondents issued Presidential order on 14.4.86 (Annexure-20) according permission to the absorption of the petitioner permanently in RITES on certain terms and conditions.

10. The question which immediately poses is whether the approval of the government vide letter dated 18.2.86 can be construed as acceptance on their part so as to culminate in a concluded contract. On bestowing our careful thought and consideration, our reply is in the negative. It is for the simple reason that mere administrative approval does not amount to unqualified acceptance of the offer in the absence of terms and conditions on which such acceptance has been given.

- 16 -

Moreover, formal sanction had still to be issued and there could be no severance of the petitioner's link with the Railways till such sanction was accorded by the appointing authority viz., the President in the instant case. Under Section 7(1) of the Contract Act, in order to convert a proposal into a promise, the acceptance must be absolute and unqualified. The said rule clearly contemplates that the words of acceptance which do not correspond to the proposal actually made are not really an acceptance of anything, and therefore, can amount to nothing more than a new proposal, or, as it is frequently called, a counter-offer. It may be recalled here that the Government stood by the date 16.10.84 notwithstanding the petitioner retracting from the said date. It is the essence of a contract that there should be aggregatio mentium, the meeting of minds of the contracting parties. Therefore, there was no consensus ad idem as to the date from which the petitioner was to be absorbed. It cannot therefore be concluded by any stretch of reasoning that there was valid acceptance of the offer by the respondents. Further, in deciding whether a contract is a concluded contract or not, the essential question to be considered is whether the formal document which may be executed is of such a nature that it was the very condition of the contract or whether it was commemorative of the evidence on the point. In order to decide this matter, the entire negotiations and the correspondence on which the contract depends must be considered. The position of the law on the subject has been summarised by

Parker, J., in Von Hatzfeldt Wildenburg Vs. Alexander¹
 in the following passage which has been approved by the
 Judicial Committee in Hukamchand Vs. Ram Bahadur Singh²
 and Currimbhoy & Co. Ltd. Vs. L.A. Creet³,:-

"It appears to be well settled by the authorities that if the documents or letters relied on as constituting a contract contemplated the execution of a further contract between the parties, it is a question of construction whether the execution of the further contract is a condition or term of the bargain or whether it is a mere expression of the desire of the parties as to the manner in which the transaction, already agreed to, will in fact go through.

In the former case there is no enforceable contract either because the condition is unfulfilled or because the law does not recognise a contract to enter into a contract. In the latter case there is a binding contract and the reference to the more formal document may be ignored".

(See also Dhulipudi Namayya Vs. The Union of India: AIR 1958 AP 533)

11. Applying this principle to the facts of the instant case, there can be no escape from the conclusion that the administrative approval accorded by the respondents vide Secretary, Railway Board's letter dated 18.2.86 did not clinch the contract between the parties inasmuch as it could not operate to sever the link of the petitioner and terminate his lien on the post held by him with the Railways. This could be done only by the requisite sanction of the appointing authority, viz., the President of India in this case. This was imperative in view of Rule 2009 of the Railway Establishment Code which corresponds to F.R.14-A. Hence, we are of the considered view that the petitioner had a right to withdraw his option for absorption in RITES w.e.f. 16.10.84 till it was finally accepted in a manner indicated above by the respondents. Indeed this conclusion^{is} further ~~is~~ fortified by the fact that vide notification dated 9th Sept., 1985 published in Gazette of India, ^{dated 19th} October, 1985 the petitioner was confirmed as Mechanical Engineer Administrative Grade Level w.e.f. 1.2.85 which would certainly^{ly} show that he still retained his lien on cadre post in the Railways.

1. (1912) 1 Ch.284 at page 288 2. 51 I.A.208: (1924 PC 156)
 3. ILR 60 Calcutta 980: (AIR 1933 PC 29)

12. We find sustenance, for the view we have taken, from some reported decisions of the Supreme Court. First of these is Jai Ram Vs. Union of India¹, which was a case of self-sought retirement from service. The plaintiff/appellant, Jai Ram therein sought voluntary retirement under Rule 56(b)(i) of the Fundamental Rules. However, the Director refused permission on the ground that the plaintiff/appellant could not be spared at that time. The plaintiff/appellant renewed his prayer by another letter and also asked for leave preparatory-to-retirement for four months on average pay etc. He repeated his request for voluntary retirement. His last request was accepted and the Director of the Institute sanctioned the leave preparatory-to-retirement. However, just 10 days before the period of leave was due to expire, the plaintiff sent an application to the Director stating that he had not retired and asked for permission to resume his duties immediately. In reply, the Director informed him that he could not be permitted to resume his duties as they had already retired him and proceeded on leave preparatory-to-retirement. In Special Appeal before the Supreme Court, B.K. Mukherjea, J., speaking for the court observed as under (at pp. 586-587):-

"It may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer, to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus contained; but, he can be allowed to do so as long as he continues in service and not after it has terminated."

1. AIR 1954 SC 584

13. The Supreme Court has also enunciated the principle of law on the subject of resignation from Government service in Union of India Vs. Gopal Chandra and others¹ in which a High Court Judge had sought to resign from a prospective date but chose to withdraw the resignation before it became operative. Said their Lordships :-

"The general principle regarding resignation is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant/or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation give up his service/or office, normally, the tender of resignation becomes effective and his service/or office tenure terminated, when it is accepted by the competent authority."

It was, inter-alia, observed by their Lordships that a proposal to retire from service/office and a tender to resign office from a future date, for the purpose of the point under discussion stand on the same footing.

14. Applying this principle to the facts of the instant case, we feel persuaded to hold that the petitioner could withdraw the option till his lien on the post in the parent department came to an end and it can be only on sanction being accorded by the President and not before.



1. AIR 1978 S.C. 694.

15. There is yet another aspect of the matter, namely, that the Government was, for no valid reason or justification, insisting on not extending the deputation of the petitioner. It is true that the general policy of the government was not to extend deputation beyond the initial term of three years and it was specifically pointed out by the Ministry of Finance (Board of Public Enterprises) O.M. dated 22.9.72 (Annexure-2 to the counter) that option orders are implemented most strictly and requests for extension of deputation beyond the prescribed limit under the orders, as a rule, be turned down by the administrative ministries. However, the said power was not inflexible in the sense that exceptions could be made and deputation period could be ~~made and deputation period could be~~ extended under certain circumstances. In the aforesaid letter itself it was indicated that "in no case should an officer be permitted to continue to be on deputation beyond the date on which he has to exercise his option for absorption in the undertaking or reversion back to the parent cadre, unless such extension of the deputation period has been approved by the ACC and unless the officer has already exercised his option for resignation from the cadre and absorption in the undertaking". In the instant case, the petitioner had exercised his option for resignation from the parent cadre and absorption in the RITES and all that was required was to get sanction of the appointing authority to quit the Railways, We do not think, it was such a herculean task which the concerned department should have taken so long in performing. It may be pertinent

: 21 :

in this context, to advert to letter dated 19th June, 1978 written by the Secretary, Public Enterprises Selection Board to Shri M. Ramaswamy, Director (Services) Ministry of Railways regarding exemption of railway officers on deputation to RITES/IRCON from the maximum deputation period prescribed for Central Government Servants going on deputation to public enterprises. (annexure IV to reply of Respondent I).

While stating that the Board keeping in view the reasons advanced by the Railway Board for such an exemption from the deputation orders and also having regard to the fact that these two organisations (namely, RITES and IRCON) were in the initial stages of being set up, felt that there would be need for senior personnel with a technical background to be drawn from the Indian Railways on deputation to man some of the posts in these organisations for some time to come, he concluded by saying that "in the circumstances, the Board endorsed the proposal of the Ministry of Railways in respect of the technical officers of the Indian Railways deputed to RITES and IRCON. At the same time, the organisations should be encouraged to build up an internal cadre during this interim period so that reliance on deputationists from Railways for manning posts in these organisation in relaxation of government order on the subject may not be necessary at the end of the five year period." It is thus manifest that the deputation of public officers, like the petitioner, could be extended upto 5 years. So having regard to the keen desire of the management of RITES to have the services of the petitioner on permanent footing the Government would have been well advised to extend the period of deputation upto 5 years especially, when the petitioner had continued to function as Chief Manager (Mech) continuously from the date of his deputation till the issuance of the Presidential sanction.

: 22 :

There was hardly any justification for the Government not to extend the deputation and at the same time, refuse to repatriate the petitioner to his parent department despite his seeking to go back immediately to the Railways in case he could not be absorbed with effect from 1.4.85 vide letter dated 24.2.86 (Annexure-18). The Government was bound to choose one of the two alternatives and it could not just sit on the fence and finally absorb the petitioner from a date which had been clearly repudiated by the petitioner.

16. Not only that, the petitioner has cited some instances in which the deputation of certain government officials, including those belonging to the Ministry of Railways, was in fact extended. The first case is that of Smt. Lalitha K. Raman who was on deputation as Junior Accounts Officer in Telecommunication Consultants India Limited and whose deputation had expired on 24th March, 1985. However, it was extended to 1.4.85, i.e., beyond the normal period of three years, obviously, with a view to enable her to get increased pensionary benefits (See Annexures 18/1 and 18/2). Likewise, the period of deputation of Shri P.R. Malik, AME, SE Railways who was on deputation with RITES and was permanently absorbed therein w.e.f. 1.6.80 was extended from 11.9.78 to 31st May, 1980 by according ex post facto sanction (See Annexure-24). In the counter affidavit filed by the respondents, they admit that the term of deputation of Shri P.R. Malik was extended beyond three years and the concurrence of the Department of Personnel to the same was also obtained. They also admit that one Shri G.C. Sharma, who was on deputation upto 31st January, 1984 but had opted for absorption from 7.4.84 was allowed absorption from the later date with the concurrence of the Public Enterprises Selection Board, and the President's sanction was issued on 10.5.1984. The

- 23 -

stand of the respondents however is that the dates of absorption were not changed after they had been approved but the proposal itself was from the date from which the officer had been finally absorbed. To say the least this argument is to be stated to be rejected. The reason being that in the instant case, the petitioner had sought his absorption from 1.4.85, if not from the date of the issuance of the President's order in no uncertain terms and there was no impediment in the way of the respondent-Government in extending the deputation of the petitioner so as to accede to his request; instead the concerned authorities adopted a hard and inflexible line and did not yield to the repeated requests of the petitioner despite their competence to extend the period of deputation. Their whole conduct smacks of arbitrariness and authoritarianism rather than rational and sympathetic approach to genuine human problems. Indeed it amounts to invidious, if not hostile, discrimination between the Government servants who were almost similarly situated and may be said to be violative of Article 14 of the Constitution which enshrines the doctrine of equality.

17. Before concluding, we may also advert to the facile plea taken by the respondents that the petitioner could not resile from the date from which he exercised his option for absorption as option once given was irrevocable. They are relying in this behalf on a letter dated (nil) July, 1985 written by the Establishment Officer and Additional Secretary, Department of Personnel and Training, Administrative Reforms and Public Grievances and Pension, to the Secretary, Railway Board, in which it was stated that "whatever be the date on which the terms of absorption are issued, the date of actual absorption would be the

- 24 -

date of completion of the stipulated deputation period". He regretted that it was also not possible to agree to the requests of the officers that in case their request for absorption was not accepted they should be allowed to be repatriated to the Railways, since once the option is exercised, it cannot be withdrawn (emphasis ours). It is not intelligible how the concerned department got into its head that once the option is exercised it cannot be withdrawn in the absence of any statutory rules or departmental instructions issued at the time of inviting options. It bears repetition that nothing has come on record to show that the officers were warned at the time of exercising their options that option once exercised cannot be withdrawn. Thus, this argument too is totally devoid of any merit.

18. To sum up, therefore, we hold that the respondents' action in issuing the Presidential order absorbing the petitioner w.e.f. 16.10.84 cannot be sustained. In the normal course, the said order would be operative on its own force from the date on which it was issued. It being purely an administrative order, cannot operate retrospectively to the prejudice/detriment of the petitioner who must be deemed to have continued on deputation with RITES till his final absorption. Hence, we hold and direct that the lien of the petitioner on his cadre post in the parent department stood terminated with effect from

contd.....

the date of the Presidential Order, i.e., 14.4.86 and he shall be entitled to all the consequential benefits in respect of salary and pension etc., if any, flowing therefrom. However, we make no order as to costs.

J.D. Jain
(J.D. Jain) 9.9.87
Vice-Chairman

I agree. However, I would like to add that one of the crucial questions in this case is whether an officer of the Railways could go to a public enterprise without tendering resignation and without acceptance of the same by the competent authority.

In terms of the Railway Board's letter No. F.(E)/63/LI/1 dated 10.12.1963, it was laid down that where a Railway employee seeks absorption in non-Government service, he would be asked to resign his appointment under the Government with effect from the date of such permanent absorption and once he resigns, the lien will stand automatically terminated with the cessation of Government service. It was contended on behalf of the respondents that the acceptance of formal resignation was not necessary in view of para. 10 of Ministry of Finance, Department of Expenditure, Office Memorandum No.26(18)-E.V(B)/75 dated 8th April, 1976, which reads as under:-

"10. With the coming into force of CCS(Pension) Rules, 1972 (which inter alia, contain a provision of deemed retirement in the case of Government servants absorbed permanently in a public sector

undertaking/autonomous body). It has now been decided that obtaining of formal resignation is not necessary if an individual is deemed to have retired from service by virtue of Rule 37 of CCS (Pension) Rules, 1972, i.e., consequent on the conditions required by this Rule, viz. permission should have been granted to the absorption in the service of the company or other body corporate, the absorption should be declared by the Govt. to be in the public interest, there should be no actual orders of absorption and the Government servant should also consent to such absorption, being satisfied."

2. At the outset, it should be stated that the circular issued by the Railway Board has the force of statutory rules and the Ministry of Finance Office Memorandum cannot modify the same unless these are adopted by the Railway Board. No documents were produced before the Court to show that the Railway Board had accepted the principle enunciated by the Ministry of Finance. Even if it is assumed that the Railway Board had only issued ^{administrative} ~~the~~ instructions, which is certainly not the case, it is clear that in the absence of statutory rules, the administrative instructions would prevail, as laid down by the Supreme Court in the case of Dr. Amarjit Singh Ahluwalia v. the State of Punjab & Ors.¹

3. Again in the case of Sukhdev Singh and others vs. Bhaqatram Sardar Singh Raghuwanshi and another,² the Supreme Court relying on the dictum of Justice Frankfurter in Vitarelli v. Seaton (1959) 359 US 535 pp 546-547, who observed as follows, has held that procedure rules once made must be scrupulously observed even if they do not have the force of law:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged... Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be

1. AIR 1975 SC 984

2. AIR 1975 SC 1331

31

scrupulously observed. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword."

(para. 122)

4. Thus, the Supreme Court has clearly held that once procedure is laid down by the executive authority, they are bound to abide by the same. In this case, once the Railway Board has laid the procedure that officers intending to go to non-government service would be asked to resign their appointment under the Government, the Railways could not renege or ~~reside~~ from the same. Since the resignation was not accepted, the application has to succeed.

9/9/87
(BIRBAL MATH)
Member (A)

September 9, 1987