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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 964/1986.

DATE OF DECISION: 30-8-1991

Shri M.S.A. Rao

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Applicant.

V/s.

Union of India & Anr.

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Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman (J).
Hon'ble Mr. P.C. Jain, Member (A).

Shri A.S. Ramachandra Rao, counsel for the Applicant.
Shri M.L. Verma, counsel for the Respondents.

P.C. JAIN, MEMBER (A): JUDGMENT

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant, who belonged to the Indian Railway Service and later got absorption in the Rail India Technical and Economic Services Limited (RITES), a Government of India Undertaking, has prayed for the following reliefs: -

- "(1) to set aside and quash the order of the President dated 11.11.1985, copy of which order is Annexure 'A', which directs that he will be absorbed in the Rites with effect from 27.2.1983 and that he will be entitled to retirement benefits which do not take into account the liberalised pension and retirement benefits rules which came into effect on 1.4.1985
- (2) to direct the Union of India to fix the applicant's pension and other retirement benefits on the basis that he is absorbed in Rites only from 11.11.1985 and therefore his deemed date of retirement is 11.11.1985 and that the liberalised pension rules that came into force on 1.4.1985 applied to him.
- (3) to grant such other relief as this Hon'ble Tribunal may deem fit in the circumstances of the case and also the costs."

2. Briefly stated, the applicant joined the Indian Railway Service in 1958. In 1980, while he was Senior Divisional Engineer working as Secretary to General Manager, North Eastern Railway, Gorakhpur, he was relieved with effect from 28.2.80 (F.N.) to join the RITES on deputation basis as Deputy Manager (Engg.) in the grade of Rs.1500-2000 on the usual terms and conditions, initially for a period of one year from 28.2.80. He continued to be on deputation in the RITES, and according to the respondents, he was on sanctioned deputation from 28.3.80 to 27.2.83. Vide Annexure 'D' (which does not bear any date), the applicant sent a letter to the Secretary, Ministry of Railways, Railway Board, New Delhi, stating that "Consequent on the decision of the Rail India Technical and Economic Services Limited, New Delhi to absorb me as SENIOR MANAGER in grade Rs.1500-2000 in the public interest, I am willing to be absorbed in RITES, New Delhi with effect from 27.2.1983 (A.N.), and I may be deemed to have retired from the Railways in public interest from that date". Having received no reply from the Ministry of Railways, the applicant sent another letter dated 15.4.1985 (Annexure E), requesting that since his absorption had not been effected till then, he may be considered for absorption in the RITES with effect from 1.4.1985 or any future date instead of 3.3.1983. The Railway Board, vide communication No.83/E(O)II/16/3, dated 11.11.1985 (Annexure A), which is the impugned order in this O.A., conveyed to the General Manager, N.E. Railway, Gorakhpur (with a copy to the applicant) that the President has accorded sanction to the applicant being permanently absorbed in RITES New Delhi in public interest w.e.f. 27.2.83. Thereupon, the applicant represented to the Railway Board, vide his representation dated 18.11.1985 (Annexure I), that since the President's sanction had been issued only on 11.11.1985, his absorption should be deemed to be with effect from 11.11.1985 and not from 27.2.1983. He sent a reminder dated 7.2.1986 (Annexure J) reiterating

his request for absorption with effect from 11.11.1985 and not from 27.2.1983. Having received no reply from the respondents, the applicant/^{filed}this O.A. on 8.10.1986.

3. We have gone through the material on record and have heard the learned counsel for the parties.

4. The applicant has, in short, questioned the legality and validity of the Presidential Order dated 11.11.1985 with retrospective effect from 27.2.83. The respondents have resisted the application primarily on the ground that the applicant who was on deputation with RITES for a period of three years was absorbed from the date his respective term of deputation expired and he himself had given his willingness for absorption in RITES with effect from 27.2.83. They have referred to the O.M. dated 26.2.69 and O.M. dated 22.9.72 issued by the Bureau of Public Enterprises to emphasise that the term of deputation of an officer to a Public Enterprise has not to be extended beyond the stipulated tenure, the option orders are to be implemented most strictly and request for extension of deputation beyond the limit prescribed under the orders as a rule should be turned down by the administrative Ministry, and if any, the proposal/for extension of the term of deputation beyond the maximum stipulated period has to be fully justified and would require prior orders of the Government. It has also been explained that one of the conditions for absorption in public sector undertaking was that no further liberalisation of pension rules decided upon by the Government after permanent absorption of the Government servant in a Public Sector Undertaking would be extended to him. Thus, the stand taken by the respondents precisely is that the Government having not agreed to the extension of deputation period of the applicant, he had to be absorbed from the date his respective period of deputation came to an end and as such he could not have any grievance of it. It has further been pointed out by the respondents that since by its very nature an option exercised once is final, there is no scope to allow any officer to return

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to the Railways after he has been finally absorbed in the RITES.

5. Learned counsel for the applicant stated at the bar that the relief claimed by the applicant is similar to the one claimed by the applicants in O.A. 109/86, O.A. 108/86, O.A. 110/86 and O.A. 111/86 and by the applicant in O.A. 364/86. He has placed on record copies of the judgments dated 9.9.1987 and 18.9.1987 delivered by a Bench of this Tribunal comprising Hon'ble Mr. Justice J.D. Jain, Vice Chairman and Hon'ble Mr. Birbal Nath, Administrative Member. Having gone through the same, we find that the facts in this case are almost identical to those in the aforesaid cases. The relevant Government instructions and the law on the subject have been discussed at considerable length in O.A. 364/86 (Shri J. Sharan Vs. Union of India and Others) decided on 9.9.87. A preliminary objection of the respondents that the applicant 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, was also dealt with in the case of Shri J. Sharan Vs. Union of India (supra) and it was held that since the relief sought was against the Union of India as a sequel to the challenge of the Presidential Order, it was within the jurisdiction of this Tribunal. Also, the RITES have been supporting the cause ~~xxxxxxx~~ of the applicant and there is absolutely no controversy between the applicant and the RITES. We agree with the view taken in the above referred case of Shri J. Sharan that the jurisdiction of a court depends upon the nature of pleadings and the relief sought and it hardly matters what the ultimate outcome of the case would be. We thus overrule the objection of the respondents on the point of jurisdiction.

6. As will be noticed from the facts stated above, the applicant herein resiled from the earlier date of absorption viz., 27.2.83 and switched over to the date 1.4.1985 or any

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future date for absorption much before the acceptance of the proposal was communicated to him by the respondents. Thus, till such sanction was accorded by the appointing authority viz., the President in the instant case, there could be no severance of the applicant's link with the Railways. In consideration of the various authorities discussed in the case of Shri J. Sharan Vs. Union of India and Others (supra) and the facts in this case being almost identical, we feel persuaded to hold that the applicant 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. Indeed, no explanation for such an inordinate delay on the part of the respondents in according requisite sanction is forthcoming. Also the instant case would appear to suffer from the vice of invidious discrimination inasmuch as the deputation period of some other persons, namely, Smt. Lalitha K. Raman, Shri P.R. Mallick and Shri G.C. Sharma etc. was alleged to have been extended in order to enable them to reap the benefit of liberalised pension rules.

7. In view of the foregoing discussion, we hold that the respondents' action in issuing the Presidential order dated 11.11.1985 cannot be sustained, to the extent that it operates retrospectively. We, therefore, direct that the applicant shall be deemed to have been absorbed permanently in RITES with effect from the date of the Presidential Order, i.e., 11.11.1985 and he shall be entitled to all the consequential benefits flowing from his absorption from 11.11.1985, by way of salary and pension etc. There shall be no order as to costs.

P.C. Jain
(P.C. JAIN) 30/8/91
Member(A)

Ram Pal Singh
(RAM PAL SINGH) 30.8.91
Vice Chairman (J)