

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

Regn. No. OA 107/86

Date of decision: 18.9.87

Shri M. Srinivasan

...Petitioner

Versus

Union of India and others ... Respondents.

For Petitioner: Mr. Y. Prabhakar 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

The applicant, Shri M. Srinivasan, was formerly a Technical Officer in the Indian Railways. The Government of India constituted two public sector enterprises styled as "Rail India Technical and Economic Services Ltd." (for short RITES) and Indian Railway Construction Company (for short IRCON) under the aegis of Department of Railways in April, 1974 and April, 1976 respectively. Having regard to the highly skilled nature of functions which the said company was performing they took on deputation specially ~~xxx~~ skilled Technical Officers including the petitioner. Eventually, the Government decided to create separate personnel for the said public enterprises and gave an option to the deputationists from the Railways for permanent absorption in RITES/IRCON as the case may be. The petitioner exercised his option in favour of absorption and expressed his willingness on 12.3.84 in response to Circular No. RITES/ESTT/ABSN/SMMI dated 10.11.83. He stated that the date of his absorption may be reckoned from the date he was to get NBR in Level I of the Railways. His case was duly recommended

by the management of the RITES and the Ministry of Railway, Government of India vide letter dated 9.9.85 (copy Annexure-B) conveyed to the Managing Director of RITES the approval of the Ministry of Railways with regard to the permanent absorption of certain officers including the petitioner with effect from the dates they completed their term of 3 years on deputation. This was despite the recommendation of the Chief Manager of RITES vide letter dated 1.9.84 who had stated that the process of absorbing the officer and staff having taken considerable time, some officers had represented that their absorption be made with prospective effect from the date of the approval by the Ministry of Railways and not from any other date. He specifically pointed out that this problem had certain special features which required special dispensation by extending the period of deputation of the officers and staff upto the date of the Ministry's approval for their absorption. On receipt of the said letter the petitioner wrote letter dated 18th October, 1985 to the Secretary, Railway Board (Annexure 'C') that the Ministry of Railways having taken long time in approving his absorption and formal orders of absorption not having been issued till then, he would request the Government to extend his period of deputation by another two years as per the liberalised policy of the Government and he be absorbed in RITES from the date of the issue of the formal orders by the Board. However, the Chairman, Railway Board turned down this request vide letter dated 5.12.85 with the following remarks:-

"No postponement in the date of absorption is possible. Officer may please be advised accordingly".

contd....

Eventually, the Presidential sanction was accorded for permanent absorption of the petitioner in RITES vide letter dated 9.1.86 w.e.f. 4.11.84 in public interest (copy Annexure-I).

2. Feeling aggrieved the petitioner has challenged the order of the Presidential sanction for his absorption in RITES with retrospective effect, i.e., 4.11.84 instead of the date of issue of the sanction. He has, inter alia, pointed out that the period of deputation of certain other officers, namely, Smt. Lalitha K. Raman and P.R. Mallick etc., had been extended in order to enable them to reap the benefit of liberalised pension rules but invidious discrimination was made in his case and he was ordered to be absorbed from a retrospective date.

3. The respondents contest this application on the ground that the Government had ordered absorption of the petitioner on 9.9.85 with effect from 4.11.84. This being an administrative order, there was no legal bar to the same being issued with retrospective effect. It was pointed out that originally vide O.M. 26.2.69 (copy Annexure-I to the counter) a person could be on deputation only for a period of 3 years and thereafter, he had the option either to revert back to his parent cadre or resign from the government service for permanent absorption in the concerned public sector enterprise. Further the Bureau of Public Enterprises clarified in their O.M. of 22nd September, 1972 (Annexure-II) that the term of deputation to public sector enterprises should not be extended beyond the limit prescribed under the orders and the option orders be implemented most strictly, and requests for extension of deputation

beyond the limit prescribed under the orders, as a rule turned down by the administrative ministries. However, they conceded that on full justification being given the period of deputation could be extended under exceptional circumstances upto 5 years, but, in the instant case, the petitioner was finally absorbed with effect from 4.11.84 because the option once exercised was final and he could not resile from the same. Reliance in this context has been placed on a letter of July, 1985 of the Department of Personnel & Training, Ministry of Personnel, Training, Administrative Reforms and Public Grievances and Pension addressed to the Secretary Railway Board intimating him that the request of the officers who sought absorption in RITES for extension of deputation could not be acceded to and it was not also possible to agree to the request 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 was exercised, it could not be withdrawn.

4. The facts of the case are almost identical to those in O.A. 364/86 Shri J. Sharan Vs. Union of India in which we had the occasion to discuss the entire gamut of relevant instructions and law on the subject at considerable length. So for ~~as~~ the reasons stated therein, we hold that in this case too, no formal sanction by the President for absorption having been issued till 9th Jan., 1986, the petitioner was well within his right to withdraw the option or opt for absorption from a subsequent date. According to his letter dated 18th October, 1985, he sought extension of his deputation by two years

ie., upto 5 years or till the date of the issue of the formal order of absorption by the Board whichever was earlier. Since the period of deputation could be extended upto 4.11.86, while the Presidential Order for his absorption was issued on 9.1.86, there is no reason why his absorption should not take effect from the date of Presidential sanction itself. Hence, we declare that the petitioner shall be deemed to have been absorbed with effect from 9.1.86 and he shall also be entitled to all consequential benefits by way of salary and pension etc. flowing therefrom. However, we make no order as to costs.

18/9/87
(Birbal Nath)
A.M.

J.D. Jain
V.C. 18.9.87