8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

Regn.No.OA 109/86, OA 108/86
OA 110/86 & OA 111/86

Date of Decision 18.9.87

OA 109/86

Shri M.P. Shingal ...Petitioner
Vs.
Union of India and others ...Respondents

OA 108/86

Shri P.S. Dutt ...Petitioner
Versus
Union of India others ...Respondents

OA 110/86

ShriNRajmani ...Petitioner
Versus
Union of India ...Respondents

OA 111/86

Shri S.K. Bhanot ...Petitioner
Versus
Union of Indiaandothers ...Respondents

For Petitioners: Mr. R.K. Kamal, Advocate in OA 109/86
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 (Judgment of the Bench delivered by Mr. Justice J.D. Jain, V.C.)

The applicants in all the above mentioned O.As. seek to challenge the power of the Government of India, respondent No.1 to enforce absorption of the applicants in Rail India Technical and Economic Services Limited (for short RITES) which is a Public Sector Undertaking owned by the Government, with retrospective effect and not from the date of the Presidential Order according sanction for the absorption from Railways in Respondent No.2. Since the facts in all these cases are by and large identical and common questions of law are involved, we have clubbed them together with a view to dispose them of by a common judgment.

2. Shortly put, the facts giving rise to this applications are that the applicants in all the above mentioned O.As. joined Indian Railways as members of Indian Railway Service of Engineers and they were promoted to senior ranks in due course of time. The Government established a Public Sector Undertaking styled as Rail India Technical and Economic Services Limited, respondent No.2 herein some time in the middle of 1974. The said undertaking needed specially skilled persons for manning key positions therein. Accordingly, the senior Technical Officers including the applicants herein were taken on deputation for a period of three years. On the expiry of their original period of deputation, the Government asked the applicants and other similarly placed officers to express their willingness/ options as to whether they were interested in getting absorbed in the undertaking on permanent basis. The applicants expressed their willingness for getting absorbed in the undertaking on various dates as indicated below. After a long time, the Ministry of Railways (Railway Board) communicated their decision to absorb the applicants in RITES permanently,but in the meanwhile certain changes have occurred by way of liberalised pension and gratuity rules etc. which came into force with effect from 1.4.85. The applicants and other similarly placed officers,therefore represented that they be absorbed from a prospective date i.e., the date on which final orders were to be issued by the Government according sanction for their absorption and not from retrospective effect as the same would cause considerable financial loss and hardship to them in view of the liberalised pension and gratuity rules etc. which had come into force in the meanwhile. However, the

Government did not accede to their request and issued the Presidential orders sanctioning their absorption from retrospective dates, namely, the dates on which their specified period of deputation was completed. Even their request for repatriation to the parent department was turned down on the plea that option once exercised was final in its very nature and as such it could not withdrawn.

3. Feeling aggrieved, the applicants have filed separate applications under Section 19 of the Administrative Tribunals Act questioning the legality and validity of the Presidential Orders in all these cases sanctioning their absorption with retrospective effect.

4. We may now summarise below the facts of each case which have a bearing on the decision thereof.

OA 109/86

The applicant, Shri M.P. Shingal was taken on deputation by RITES as Group General Manager with effect from 6.7.81 for a period of three years. He exercised his option on 7.1.84 to be absorbed permanently in RITES. However, it was only vide letter dated 21.1.85 i.e., after the lapse of about a year that the Ministry of Railway (Railway Board) conveyed their decision to absorb him permanently in RITES with effect from 7.7.84, i.e., from the date his initial term of deputation had expired. It was however clarified that sanction giving terms and conditions of their absorption would issue in due course. It was despite the fact that in the meanwhile, the Chief Manager of the RITES had written to the Secretary, Ministry of Railways (Railway Board) vide letter

dated 1.9.84 (Annexure 'D') stating that the process of absorbing officers and staff in RITES which involved a change in the think-ing of the Ministry on the fundamental question of permanent staffing of the Company took considerable time, therefore, some officers had represented their absorption may be affected prospectively from the date of approval by the Ministry. The RITES also pointed out that there was considerable substance in the said request because the delay in absorption was purely administrative and in case retrospective effect was given to their absorption, they stood to loose financially in the matter of their settlement of dues. So, he requested for special dispensation by extending the period of deputation of the said officers uptil the date of the Ministry's approval for their absorption.

6. On receipt of the decision of the Ministry of Railways to absorb him in RITES w.e.f. 7.7.84, the petitioner represented vide letter dated 3rd June, 1985 (Annexure 'C') that a long time having elapsed in between the exercise of option by him and the decision of the Railway Board, there was considerable change in the situation and in case he was absorbed with retrospective effect, he stood to suffer considerable financial loss. So he prayed that his absorption should be effective only from the dates, the terms and conditions and the Presidential approval for his absorption were conveyed to him. In the alternative, he requested for his repatriation to the Railways. However, the request of the petitioner and other officers who had made similar representations was turned down by the Ministry of Railways (Annexure 'E' letter dated 16.8.85) on the

advice of the Department of Personnel on the ground that the date of their actual absorption would be the date of completion of the stipulated period of deputation. It was pointed out that if the said date was to be postponed extended the officers would have to be treated on/deputation until the date of actual absorption which would be against the Committee of the Cabinet. orders of the Appointments/Department of Personnel too regretted that it was not possible for them even to accede to their request that in case their request for absorption was not acceded to, they should be allowed to be repatriated to the Railways since the option once exercised is final and it cannot be withdrawn. Not un-nerved by the said letter, the petitioner made another representation to the Government on 18.10.85 (also Annexure 'C') reiterating his earlier stand and requesting for issue of extension of his deputation till the issue of formal orders by the Board. He specifically pointed out that in the absence of the formal orders he was unable to clear his dues from the Railways and he opted for absorption on 28.1.84 on the understanding that formal absorption would be done immediately on completion of three years of deputation period. However, vide Presidential Order dated 11.11.85, the Government accorded sanction to the petitioner for permanent absorption in RITES in public interest with effect from 7.7.84. The petitioner thereupon made a last bid vide his letter dated 15.11.85 to get himself absorbed from the date of the sanction and issue of terms and conditions and in the alternative for his repatriation to the Railways. Failing to get any response to the same, he has come up with the present application. The petitioner has inter alia cited certain instances in which deputation period of some officers was extended in order to enable them to have the benefit of the liberalised pension rules.

OA 108/86

Shri P.S. Dutt, the applicant, exercised his option for permanent absorption in RITES on 8.8.84. Vide letter dated 9.9.85 addressed to the Managing Director, RITES, the Ministry of Railways (Railway Board) conveyed their approval for permanent absorption of the petitioner and other similarly placed officers with effect from the dates, they had completed three years of deputation. The particulars of the said officers in the prescribed form were also called for. On receipt of the said letter, the petitioner represented vide his letter dated 18.10.85 that in view of the changed policy of the Government and the Department of Personnel having agreed to extend the period of deputation from 3 years to 5 years in the case of deputationists who were working on project oriented posts, his period of deputation be enlarged by 5 years or till the date of the issue of formal orders of his absorption by the Board, whichever was earlier. However, his request for absorption from a prospective date was turned down vide letter dated 5.12.85 (Annexure-E) and eventually President's sanction was accorded vide order dated 9.1.86 (Annexure-I) for his absorption in RITES in public interest with effect from 26.2.85, i.e., the date on which he had completed his stipulated period of deputation. Hence, he has come up with this application challenging the validity of the said order.

OA 110/86

Shri N.Rajmani, the applicant in this case, opted for permanent absorption in RITES on 24th November, 1983. He was on deputation with RITES with effect from 19.1.82 for a period of 3 years. However, vide his

letter dated 14.6.85 (Copy Annexure-C), he represented that he be absorbed with effect from 1.4.85 so that he could get benefits of liberalised pension rules. As stated above, the Chief Manager, RITES had also addressed a letter dated 1.9.84 to the Secretary of Ministry of Railways (Railway Board) requesting him for absorption of the various officers in RITES from prospective dates in view of the long delay on the part of the Ministry of Railways in communicating their decision and the changes which had occurred in the intervening period. It was specifically pointed out that if retrospective effect was given to their absorption, there will be difficulty in the settlement of their dues. However, vide letter dated 9.9.85 (Annexure-B) addressed to the Managing Director, RITES, The Ministry of Railways (Railway Board) intimated their approval of the petitioner for permanent absorption in RITES with effect from the date he had completed his three years of deputation. Eventually, Presidential Order was issued on 9.1.86 according sanction of the President to permanent absorption of the petitioner in RITES in public interest w.e.f. 19.1.85. Feeling dissatisfied, he has moved this application.

OA 111/86

Shri S.K. Bhanot, the petitioner in this case, exercised his option for permanent absorption in RITES on 27th March, 1983 and it was on 21st January, 1985 that the Ministry of Railways conveyed their decision to absorb him permanently in RITES with effect from 27.7.83 (Copy Annexure-B). It was clarified that sanction giving terms and conditions of his absorption would issue in due course. On the receipt of the intimation, he represented

vide Annexure-C dated 28.2.85 that his absorption with retrospective effect of nearly one and a half year would cause him heavy financial loss inasmuch as liberalised pension rules had come into force in the meanwhile. So, he prayed that he be absorbed with effect from 1.4.85 or from the date of the issue of the sanction whichever was later as it was not known as to when the formal sanction was likely to be issued. Vide another letter dated 29.3.85, he again requested the Ministry of Railways that if it was not possible to allow his absorption at least from 1.4.85, he be repatriated to the Railways. As stated above, the RITES had already written to this effect on 1.9.84 (Annexure-D) to the Secretary, Ministry of Railways (Railway Board). The RITES again wrote to the Chairman, Railway Board vide letter dated 12th March, 1985 that the representation of Shri Bhanot be accepted as his absorption w.e.f. 27.7.83 would cause him tremendous financial loss. However, as stated above all the representations were turned down by the Ministry of Railways (Railway Board) in consultation with the Department of Personnel vide letter dated 16.8.85 written by the RITES to the petitioner Shri Bhanot. Eventually, the Presidential sanction was accorded in this case too on 11.11.85 (Annexure-I) for absorption of the petitioner with effect from 27.7.83 in RITES in public interest. Feeling aggrieved, he has filed this application.

7. All these applications are resisted by the respondent, Union of India, primarily on the ground

that as per the policy of the Government, all the applicants who were on deputation with RITES for a period of three years were absorbed from the dates their respective terms of deputation expired and the proposal for the extension of their term of deputation beyond ~~xxx~~ the initial period of deputation was not agreed to by the concerned authority. In this context, they referred to O.M. dated 26.2.69 issued by the Bureau of Public Enterprises, Department of Expenditure, Ministry of Finance (Annexure-I to the counter) in which the decision of the Government, that the officers deputed to public enterprises should be asked to exercise an 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, from the date their period of deputation came to an end, was circulated. It was further stated in the said Memo that the total period of deputation would not be extended beyond 3 years. However, the respondents clarified that the Bureau of Public Enterprises in their O.M. dated 22.9.72 (Copy Annexure-II) explained that the term of deputation of an officer in public enterprises 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 limit under the orders should, as a rule, be turned down by the administrative ministries. However, proposal for extension of the term of deputation beyond the maximum stipulated period should be fully justified and would require prior orders of the Government. It was further 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 (emphasis ours) in a Public Sector Undertaking would be extended to him. The respondents however conceded that in 1978 RITES and IRCON(another Public Sector Undertaking of the Government) found that if the maximum tenure of three years is observed in their case they will not be able to utilise expertise gained by Railway Officers on deputation with them in their formative stages. Accordingly BPE was approached to relax the conditions of maximum deputation term of three years in case of Railway Officers on deputation to RITES and IRCON.The PESB agreed that in case of technical officers of Indian Railways on deputation to RITES and IRCON they could be continued on deputation upto five years subject to Government approval.

8. So, the stand of the respondent, Union of India, precisely is that the Government not having agreed to extension of period of deputation in the case of the applicants they had to be absorbed from the dates their respective period of deputation came to an end and the petitioners could not make any grievance of it. They further pointed out that since by its very nature an option exercised once is final, there is no scope to allow any officer to return to the Railways after he has been finally absorbed in the RITES.

9. The facts in all these cases are almost identical to those in O.A. No.364/86 (Sh. J. Sharan Vs. Union of India and others) in which we had an occasion to discuss the entire gamut of relevant

government instructions and the law on the subject at considerable length. Points in issue involved in the said case too were similar. Hence we need not go over the whole span of controversy in these applications. So, for the reasons recorded in J. Sharan case (supra), the Presidential Orders adverted to above would not have retrospective effect being purely administrative in nature. Indeed, no explanation for inordinate delay on the part of respondent No.1 in according requisite sanction is forthcoming. Even otherwise the instant cases appear to suffer from the vice of invidious discrimination inasmuch as admittedly, the deputation period of some other persons, namely, Smt. Lalitha K. Raman, Shri P.R. Mallick and Shri G.C. Sharma etc. was extended in order to enable them to reap the benefit of liberalised pension rules.

10. Consequently, we allow these applications and set aside the aforesaid Presidential Orders to the extent they operate retrospectively. We, therefore, direct that the applicants shall be deemed to have been absorbed permanently in respondent No.2 with effect from the dates of Presidential Orders in their respective cases, i.e., Shri M.P. Shingal and Shri S.K. Bhanot w.e.f.11.11.85 and Shri N. Rajmani and Shri P.S. Dutt w.e.f. 9.1.86. We further direct that the applicants shall be entitled to all the consequential benefits flowing from their absorption by way of salary and pension etc. However, we make no order as to costs.

(Birbal Nath)
Administrative Member

(J.P.Jain)
Vice-Chairman