IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 617 of 1987
T.A. No. 199

DATE OF DECISION 21.2.92

R.L. BANGIA — Petitioner

Shri R.K. Kamal — Advocate for the Petitioner(s)

Versus

Union of India & Others — Respondent

— Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. P.S. Habeeb Mohamed, Member (A).

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 ? x
4. Whether it needs to be circulated to other Benches of the Tribunal ? x

(Judgment of the Bench delivered by Hon'ble Shri Justice Ram Pal Singh Vice-Chairman (J).)

JUDGMENT

This judgment shall also govern the disposal of OA Nos. 618/87, 1460/87, 1897/89, 1468/87, 963/89, 1051/89, 1052/89, 1053/89, 1000/8, 1032/89, 1001/89, 1021/89, 1664/89, 1807/89 and 1028/90/ /and 1335/89, 1021A/89, 1021B/89 and 1021C/89.

The prayers in all these O.As are common, that is, the impugned orders passed by the respondents on different dates with regard to these applications (Annexure A-1 dated 3.3.86 in this case) be quashed and set aside. They have also prayed for the relief that the respondents be directed to allow permanent absorption of the applicants in the RITES from the date of the actual acceptance of their resignation by the competent authority in public interest.

2. As a common question of law i.e. "retirement/acceptance of resignation for the purpose of permanent absorption in Public Sector Undertakings cannot have a retrospective effect" arises in

618/89

all these O.As, hence this judgment shall also govern O.A. Nos. 617/87 (Manoranjan Sinha), 1460/87 (J.S. Bammi), 1897/89 (Inder Pal Singh), 1468/87 (Dharmvir Dhir), 963/89 (Jai Chand Joshi), 1051/89 (J.N. Kohli), 1052/89 (J.P. Vaish), 1053/89 (Dharam Raj Roy), 1000/89 (D.P. Jain), 1032/89 (Vishnu Dutt Sharma), 1001/89 (V.D. Keshwani), 1335/89 (S.C. Dixit), 1021/89 (Brahmanand & Ors.), 1664/89 (P.N. Sharma), /1335/89 (S.C. Dixit), 1807/89 (K.V.S. Murthy) and 1028/90 (V. Narayanan)/ Respectively, T021A/89 (Sewa Singh), 1021B/89 (Purshotam Kapoor) and 1021C/89(O.P.Vyas). the impugned orders which are required to be quashed are dated 3.3.87 (in the present case), 24.3.87, 19.2.85, 26.89, 4.11.84, 12.11.87, 6.5.86, 22.2.85, 21.8.85, 5.3.87, 22.1.86, 26.5.86, 9.1.86, 3.3.87, 3.3.87, 9.1.86, 3.3.87, 31.3.87, 15.5.86 and 4.3.86 and 17.1.86, 3.3.87, 3.3.87, 9.1.86 & 3.3.87.

3. The applicant joined the Northern Railway as Guard 'C' and was selected as Traffic Apprentice on 18.12.61 and was then promoted as Traffic Inspector in 1973 and was further promoted to the grade of Rs. 700-900 in 1978. He was promoted on ad hoc basis as Class II/Officer in December 1981. On 21.12.81, the applicant was sent on deputation to Rail India Technical and Economic Services Limited (for short 'RITES'). This public sector undertaking styled as RITES was established by the Government of India in the middle of 1974. As the said undertaking needed specially skilled persons for manning key posts therein, it needed the services of senior technical persons on deputation. The applicants went on deputation to RITES, New Delhi. They joined different posts. They remained on deputation to the RITES since then with their lien with the Railways. The applicants expressed their willingness to get absorbed/ permanently in the RITES before their period of deputation was over, hence they all submitted their resignations to the parent Department of Railways, but the same remained pending for acceptance. During the pendency for acceptance, the applicants remained linked with the Railways Department, but working on deputation in the RITES. The deputation of the applicant continued beyond the deputation period/ i.e. 21.12.84 and he was told that it would be treated as "unauthorised with attendant consequences" unless option is given by the

applicant to get absorbed from the date of the completion of the sanctioned tenure. Although the services of the applicant were continued in the RITES beyond the sanctioned deputation period, the Railway Board was treating the period as "unauthorised with attendant consequences" and this was conveyed to the applicant. Hence, the applicant signed a declaration form as supplied by the RITES. After signing this declaration on 28.7.86, the applicant continued his services in the RITES awaiting acceptance of his resignation and absorption orders in RITES. He learnt that the resignation was accepted on the file by the competent authority in the first week of March, 1987. The applicant after signing the declaration on 28.7.86, received the impugned order dated 3.3.87 conveying sanction of the President for permanent absorption of the applicant in RITES with back date i.e. from 22.12.84. The RITES also did not issue the absorption orders before the sanction of the absorption of the applicant by the President in public interest. It is this impugned order ordering the absorption of the applicant from back date, i.e., 22.12.84 which is under challenge in the present O.A. In other OAs, the dates of impugned orders and back dates are different. However, as the principle is to be laid down, they contend that instructions contained in para 5 of Annexure A-IV clearly lay down that

> "the orders of permanent absorption should be issued only after the resignation of the Railway servant has been accepted by the Government and with effect from the date of such acceptance."

The applicants, therefore, contend that the resignation should not have been accepted from back date, but should be deemed to have been accepted only from the date of acceptance.

The respondents on notice appeared and filed their return opposing the facts contained in all these OAs. They also raised a preliminary objection in some of the OAs as being barred by limitation. They justified the orders passed by the respondents and

contended that there is nothing wrong or against the rules or principles of law in accepting the resignation with retrospective effect. They also contend that it was the request of the applicants for permanent absorption in the RITES and as the RITES has raised an objection with regard to this absorption with back date, the grievances of the applicants are baseless. They also maintained in their return that the applicants unconditionally opted for permanent absorption in the RITES which was approved finally. Hence, the applicants are estopped from going back from their previous commitment.

5. Shri R.K. Kamal, learned counsel, appeared on behalf of the applicants and submitted at length his arguments. Somehow, counsel of the respondents were not available on the date of hearing and hence it was directed that they may file their written arguments which shall be considered at the time of the judgment. Hence, S/Shri I.C. Sudhir, R.L. Dhawan, Inderjit Sharma, O.P. Kshatriya and O.N. Moolri filed their written arguments. We have carefully considered their contentions and proceed to adjudicate the matter in hand.

6. The qestion to be adjudicated was the subject matter of consideration in the case of J. Sharan vs. Union of India in O.A. No. 364/86. This was also the subject matter of consideration by different Division Benches of this Tribunal in OA Nos. 109/86, 108/86, 1110/86 and 111/86 (M.P. Shingal and others) dated 18.9.87. In view of these decisions, the question need not detain us any more. The orders and which were passed in different OAs, the effective dates of retirement are being given below.

In O.A. No. 617/86, the effective date of retirement was to be 22.12.84. Similarly, respectively in all the other OAs, the date were to be 11.10.85, 7.12.82, 22.4.85, 22.11.82, 4.1.86, 8.1.86, 8.1.85, 1.11.83, 7.6.83, 4.12.84, 4.6.85, 11.12.85, 28.12.84, 1.6.86, 7.9.85, 12.4.85, 1.5.86, 17.5.84, 15.1.84 and 1.1.84.

In the case of J. Sharan vs. U.O.I (supra), it has been held that such orders as passed by the respondents in Annex. A-1 would not have retrospective effect being purely administrative in nature. It was further observed that no explanation for inordinate delay on the part of respondents in according the requisite sanction is forthcoming. It would be seen that in their returns, the respondents in these matters have also not assigned any valid reasons for having passed the orders after inordinate delay after the submission of the resignations. The respondents contended that it was an administrative order. It is settled by now, that administrative orders, if passed in a manner which is not based upon the principles of natural justice and equity, cannot be said to be good orders. Administrative orders are not immune from judicial review and while examing all these impugned orders, we do not find any justification on the part of the respondents for having passed the orders to be effective retrospectively.

In the case of S.K. Sharma vs. U.O.I (OA 615/87) decided on May 5, 1989, a Division Bench of this Tribunal has also placed reliance in the case of J. Sharan (supra) and directed that the applicant's date of retirement from the I.A.S. and his permanent absorption in HUDCO shall be taken as 28.6.1985 and he shall be entitled to all retirement benefits on this basis. They further directed that the intervening period shall be treated as one on deputation on the usual terms and conditions.

In the case of P.M. Sreedharan vs. U.O.I. & Ors. (OA 370/88), decided on 1.6.90, another Bench of this Tribunal following the principles of J. Sharan (supra), laid down the following ratio:

> "That the order passed by the respondents was purely an administra tive order and cannot operate retrospectively to the prejudice or detriment of the applicant."

They further laid down that the applicant must be deemed to have continued with the RITES till his permanent absorption. It was further directed that the lien of the applicant on his cadre post

in the parent post stood terminated with effect from the date of the administra tive order.

In another case U.B. Singh vs. U.O.I. & Ors (OA 616/87) (decided on 7.61991) in which one of us was a party (Hon'ble Shri Justice Ram Pal Singh) also placed reliance on the decision in J. Sharan (supra)'s case and made the observations that an administra tive order cannot be directed to operate retrospectively to the prejudice and detriment of the applicant. It was also laid down that the applicant must be deemed to have continued on deputation with the RITES till his final absorption. It was further laid that the lien of the applicant from the parent department stood terminated only from the date when the resignation by the parent department was accepted. It was further laid down that orders of aceptance of resignation, i.e., the administrative orders, cannot operate retrospectively.

A similar view was taken in another Bench decision in the case of Mohd. Salim Akhtar vs. U.O.I. (OA 330/89), decided on 26.11.1991.

7. We are, therefore, of the opinion that the impugned orders which were passed by the respondents on different dates (in this case on 3.3.87) are the dates from which the resignation became effective. The letter of resignation becomes effective only from the date of the actual acceptance of the resignation by the competent authority. Hence, the resignation of these applicants became effective on the dates they were actually accepted by the competent authority and not from the date from which they were directed to operate retrospectively. We, therefore, set aside the impugned orders (Annex. A-1) in this case and other impugned orders in other OAs to the extent that they do not operate retrospectively and shall be operative only from the dates the resignations were actually acepted and it is only from these dates that the applicants lien stood terminated in the parent department and it is only from these dat es that the absorpotion of the applicants in the RITES became final.

Lien cannot be terminated retrospectively unilaterally by the cadre controlling authority.

8. The respondents have objected that O.A. Nos. 963/89, 1051/89, 1052/89, 1953/89, 1012/89 and 1028/90 are barred by limitation. It appears that on this ground alone, the applicants in these OAs should not be deprived of the benefits they are to get by the previous judgements of this Tribunal and also by the judgement in this case. Technicalities cannot be permitted to block the flow of justice.

9. Consequently, we allow these OAs and direct the respondents that the resignations accepted shall be deemed to be operative only from the date of the actual acceptance of the resignations and not retrosectpvely. This order of the retrospective operation of the impugned orders is being quashed and the respondents are directed to consider the applicants for permanent absorption in the RITES only after the actual date of acceptance of their resignation from the parent department and give them all the consequential benefits, including pay fixation, promotion in accordance with rules and arrears of pay and allowances together with simple interest at the rate of 12% per annum till the date of the absorption in the RITES. We further direct the respondents to comply with these directions within a period of three months from the date of receipt of a copy of this judgment. The parties, in the facts and circumstances of the case, shall bear their own costs.

(P.S. HABEEB MOHAMED)
MEMBER (A)

(RAM PAL SINGH)
VICE-CHAIRMAN (J)

CERTIFIED TO BE TRUE COPY

Date 27/12/91

Section Officer (J)
Central Administrative Tribunal
Principal Bench, Faridkot House
Copernicus Marg, New Delhi

SKS
27.12.92