

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI I

Regn. No. OA 273/87

Date of Decision 18.9.87

Shri R. Somasekhar

...Applicant.

Versus

Union of India and others

...Respondents

For the Petitioner: Mr. Y. Prabhakara Rao, Advocate

For the Respondents: Shri 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.)

By this application, the petitioner seeks to challenge the power of the Government, respondent No.1 to enforce retrospectively the order of his absorption in Indian Railway Construction Company Limited (for short IRCON) on permanent basis.

2. The facts giving rise to this application are that the petitioner was formerly employed with the Indian Railways as a member of the Indian Railway Service of Engineers. On creation of IRCON as a Public Sector Enterprise of the Government it needed specially skilled persons for manning the key positions in the enterprise, the petitioner was thereupon taken on deputation with IRCON for a term of three years. Subsequently, however, the IRCON decided in consultation with the Ministry of Railways to have permanent staff and it called for options from the deputationists for permanent absorption in it. The petitioner gave his option for permanent absorption in IRCON and vide letter

dated 21.1.85, the Ministry of Railways (Railway Board) addressed to the Managing Director, IRCON conveyed the decision that the petitioner be absorbed in IRCON with effect from 1.4.84 (which was the date on which the period of deputation was to expire). It was clarified in the said letter that the sanction giving terms and conditions of absorption would be issued in due course. On receipt of this letter, the petitioner vide his letter dated 14.5.85 requested the Secretary, Railway Board that he be permanently absorbed with effect from 1.5.85 or from the date the revised pensionary and commutation benefits became effective, as otherwise he would be put to great financial loss. By another subsequent letter dated 23rd August, 1985, he represented that he would be loosing benefit of revised pensionary rules in case he was absorbed with retrospective effect i.e., 1.4.84 and he would suffer heavy financial loss. ^{out} He further pointed out that some of his juniors had since been promoted as Additional Chief Engineers etc. in the Railways and even the officers who had come on deputation to IRCON had also been promoted either before or after absorption, but he had been deprived of the benefit of promotion both in the Railways and IRCON, presumably because of the contemplated absorption. So he asked for justice to him in the matter. However, vide letter dated 20.9.85, the petitioner was informed that the Ministry of Railways (Railway Board) had not agreed to the change of the date of absorption and accordingly his permanent absorption in the Company would be effective from the date of the option i.e., 1.4.84 (the date of expiry of three years of the term

of deputation). On receipt of the said letter, the petitioner again represented vide his letter dated 16.10.85 that his request for change of date of his absorption in IRCON from 1.4.84 to 1.5.85 be considered sympathetically as a special case because he would be retiring on superannuation on 31.1.86 and he would suffer heavily financially in case his request was not acceded to. However, vide Presidential Order dated 11.11.85 sanction was accorded to the petitioner for his permanent absorption in IRCON in public interest with effect from 1.4.84. Feeling aggrieved by the said order, he has come up with this application to challenge the validity and legality of the aforesaid Presidential order on the ground that it was arbitrary inasmuch as the Government did not take a decision for a long period and withheld their acceptance/sanction for his absorption without any rhyme or reason. According to him the very conduct of the Government in allowing the petitioner to work on deputation beyond the stipulated period itself implies extension of deputation. He has also alleged invidious discrimination in his case inasmuch as the deputation period was in fact extended in the case of some other officers with a view to permit them to avail of enhanced pensionary benefits which had come into force before the dates of absorption in public enterprise.

3. The respondent, Union of India, has not filed any counter in this case, presumably because the facts and points in issue in the case are identical to those in several other similar applications, namely, Shri J. Sharan Vs. Union of India: OA 364/86, Shri P.M.Venkatesan Vs. Union of India: OA 371/86 and Shri M.P.Shingal Vs. Union of India: OA 109/86 etc.

4. Since the facts of this case are almost identical to those in OA No.364/86 (Shri J.Sharan Vs. Union of India) and the points in issue too are identical in both the cases we need not go over again the entire gamut of controversy in this case. For reasons recorded in J. Sharan (supra) we hold that the Presidential Order dated 11.11.85 being purely an administrative order could not have retrospective effect. No explanation for inordinate delay on the part of the respondent No.1 in according the requisite sanction is forthcoming. Even otherwise the instant appears to be a case of invidious discrimination as the deputation period of some other persons, namely, Smt. Lalitha K. Raman, Shri P.R. Mallick and G.C. Sharma etc. was extended in order to enable them to have the benefit of liberalised pension rules.

5. Consequently, we allow this application and set aside the order of the President dated 11.11.85 to the extent it operates retrospectively. We direct that the petitioner shall be deemed to have been absorbed permanently with respondent No.2 with effect from the date of the said order, i.e., 11.11.85 and he shall be deemed to be on deputation with respondent No.2 till then. The petitioner shall also be entitled to all the consequential benefits flowing from his absorption with effect from 11.11.85 by way of salary and pension etc.

28/9/87
 (Birbal Nath)
 Administrative Member

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

(8.9.87)