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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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Regn. No. OA-616/87

Date of decision: 7.6.1991

U.B. Singh

Applicant

Vs.

Union of India & Others

Respondents

PRESENT

Shri R.K. Kamal, counsel for the applicant.

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

Hon'ble Shri P.C. Jain, Member (A).

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

J U D G M E N T

The applicant joined the service of the Northern Railways as Traffic Apprentice in the year 1961 and held various supervisory posts in the Railway upto 11.10.1982. On 12.10.1982, he 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 in the middle of 1974. As the said undertaking need especially skilled persons for manning key posts therein, it needed the services of senior technical persons on deputation. When on 12.10.82, the applicant went on deputation to RITES, New Delhi, he was posted as Assistant Traffic Manager in the grade of Rs. 700-1200. He remained on deputation to the RITES since then with his lien on the Northern Railways. The applicant contends that his being on deputation is corroborated by Annexure A-2, a letter from the General Manager, Northern Railways, dated 13.3.87. The name of the applicant is shown on the panel of Class II officers at Sl. No. 24. The applicant expressed his willingness to get absorbed permanently in the RITES before his period of deputation was over. Hence, he submitted his resignation in October, 1985, but the same

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remained pending for acceptance. Meanwhile, as his resignation was not accepted, he remained linked with the Northern Railways though working on deputation in the RITES. That is why, the General Manager, Northern Railways, allowed the applicant to appear in the written test and viva voce test for selection to Class II posts in the Railways. Ultimately, he was selected and his name was included in the panel on 13.3.87. At last on 24.3.87, the G.M., Northern Railways, issued the impugned order dated 24.3.87 (Annexure A-1) paving thereby the permanent absorption of the applicant in the RITES, but in the impugned order it was mentioned by the G.M. that the resignation shall be deemed to be effective from the back date i.e. 11.10.1985. Consequently, the applicant was absorbed in the RITES from back date i.e. 12.10.1985 (Annexure A-3).

2. The applicant is aggrieved by Annexure A-1 dated 24.3.87 and hence he has filed this O.A. under Section 19 of the Administrative Tribunals Act 1985 (hereinafter referred as 'Act') wherein he has prayed for the relief that Annexure A-1 dated 24.3.87 be quashed and set aside. The second relief he claims is that respondents be directed to consider the permanent absorption of the applicant in the RITES from the date of the acceptance of his resignation from the Railways.

3. The respondents in their letter have controverted the facts contained in the O.A. and, inter alia, raised several objections to the maintainability of the application. They justify the order of the G.M. (Annexure A-1) on the ground that it is an administrative order and there is no legal bar on an administrative order issued with retrospective effect. They contend that the resignation which was accepted on 24.3.87 with effect from 12.10.85 is an administrative order. They further contend that the lien of the applicant with the Northern Railways stood terminated after he gives his consent for final absorption in the RITES. They also maintain that it was the request of the applicant for the permanent absorption in the RITES and as the RITES has raised no objection with regard to his absorption with effect from 12.10.85, the grievance of the applicant is baseless.

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According to them, the petitioner unconditionally opted for permanent absorption in the RITES which was approved finally. The applicant is estopped from going back from his previous commitment.

4. The sole point for adjudication is whether the lien of the applicant could be terminated with retrospective effect unilaterally by the cadre controlling authority?

5. We have heard the learned counsel for the applicant, Shri R.K. Kamal. None appeared for the respondents. Hence, we proceed to examine the question in hand on the basis of the return and documents filed by the respondents.

6 The question in hand is said to be covered by the decision of the Division Bench of this Tribunal in OA 109/86, 108/86, 110/86 and 111/86 (M.P. Shingal and others) dated 18.9.87. Hence, the question in hand need not detain us any more. Annexure A-1 was passed by the General Manager on 24.3.87. This order was passed consequent upon the decision of the RITES with regard to the permanent absorption of the applicant and another holding a lien with Respondent No.1. This letter at Annexure A-1 contains the fact that sanction has been accorded by the competent authority for their permanent absorption in the RITES/deemed to have resigned from this Railway by the above person on 11.10.85. Thus, this order that was passed on 24.3.87 has been directed by Respondent No. 1 to be operative with effect from 11.10.85. According to the applicant, he had submitted his resignation much earlier, but the same was kept pending for a decision by Respondent No. 1. It has, therefore, to be examined whether the resignation of the applicant can be accepted retrospectively or not. The case of M.P. Shingal (supra) is based upon the decision in O.A. No. 364/86 - J. Sharan vs. Union of India - in which it has been held that such orders as passed in Annexure A-1 would not have retrospective effect being purely administrative in nature. They have further observed that no explanation for inordinate delay on the part of Respondent No. 1 in according the requisite sanction is forthcoming. In their return also, Respondent No. 1 has not assigned any reason for having passed the order on 24.3.87, several years after the resigna-

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tion was sent by the applicant. They have simply contended in their return that it was an administrative order, but 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 examining Annexure A-1, we do not find any justification on the part of Respondent No. 1 for having passed the order to be effective retrospectively. We are, therefore, of the opinion that Annexure A-1 which was passed on 24.3.87 is the date from which it is correctly 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 the applicant became effective only on 24.3.87 and not on 11.10.85. We, therefore, set aside the order at Annexure A-1 to the extent that it does not operate retrospectively. As Annexure A-1 was passed on 24.3.87, it is the date the lien of the applicant stood terminated in the parent department and it is after this date that the absorption of the applicant in the RITES became final. The lien cannot be terminated retrospectively unilaterally by the cadre controlling authority. We, therefore, allow this O.A. and direct that Annexure A-1 passed on 24.3.87 to the extent to be operative retrospectively is quashed and the Respondents are directed to consider the applicant for permanent absorption in the RITES only after the actual date of the acceptance of his resignation i.e. 24.3.1987 from the parent department. and give consequential benefits. However, there shall be no order as to costs.

Cec
(P.C. JAIN) 7/6/88

MEMBER (A)

Ram Pal Singh
(RAM PAL SINGH)

VICE-CHAIRMAN (J)