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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. 1546/90

New Delhi this the 17th day of August, 1994.

Shri N.V. Krishnan, Vice Chairman(A).

Shri C.J. Roy, Member(J).

Bhagwan Chandwani
S/o Shri Gurmukhdas,
R/o CD 51-C, DDA Flats,
Hari Nagar,
New Delhi.

..Applicant.

By Advocate Shri R.K. Kamal.

Versus

Union of India through
The General Manager,
Northern Railway,
Baroda House,
New Delhi.

..Respondent.

By Advocate Shri Shyam Moorjani.

• ORDER (ORAL)

Shri N.V. Krishnan.

The applicant was an employee of the Railways working under the respondent, the General Manager, Northern Railway, New Delhi when he was sent on Sector deputation to the Public/Under Taking known as Rail India Technical and Economic Services (RITES for short). On the applicant submitting a representation to be permitted to be absorbed in the RITES permanently, it appears that he was asked to give a declaration in writing through the RITES to the Government that he be treated as having resigned from the Railways with effect from the date on which his deputation in the RITES would come to an end. It is admitted that in the normal course this deputation would have come to an end on 17.9.1986 being three years from the date of deputation to RITES. Accordingly, this representation and

declaration was forwarded by RITES to the Railways.

2. Thereupon, the Annexure A-3 order dated 22.12.1987 was passed by the respondents which reads as under:

"Consequent upon request of Rail India Technical and Economic Services Ltd. for permanently absorption in public interest on completion of three years deputation period by Shri Bhagwan Chandwani Hd. D/Man D.O. Signal Hd. Qrs. Office, by Shri New Delhi on 17.9.86 approval has been accorded by competent authority for his deemed to have been resigned from this Railway w.e.f. 17.9.86 and his permanent absorption on RITES w.e.f. 18.9.86 in public interest.

Sd/-

for Sr. Personnel Officer (HQ)"

3. It is against this order that this application has been made on the ground that the administrative order of retirement cannot be given retrospective effect from 17.9.1986 as held in the judgement of this Tribunal in O.A. 370/88, P.M. Sreedharan Vs. Union of India & Ors., Annexure A-5.

4. The applicant has prayed for the following reliefs:

"8.1. The retrospective effect given to retirement/absorption orders be declared contrary to the principles of law.

8.2 The respondents be directed to treat his retirement/resignation effective from the date of communication i.e. 22.12.87, with all consequential benefits by way of final settlement dues, etc. to the applicant with interest.

8.3 The respondents be directed to refund the illegal recoveries made from the DCRG of the applicant with interest".

5. The respondents have submitted a reply contesting this claim.

6. It is stated that this O.A. which has been filed on 30.7.1990 challenging the order dated 22.12.1987 is barred by limitation. Further, the respondents state that the applicant had himself sought severing his connection w.e.f. 17.9.1986 by his application which was accepted by the order dated 22.12.1987. In the circumstance, nothing more survives and the O.A. has to be dismissed.

7. We have heard the learned counsel for the applicant. He submits that similar matters have already been decided earlier in R.L. Bangia Vs. Union of India & Ors., ATR 1992(1) CAT 704 by the judgement delivered on 21.2.1992, in which O.A. 617/87 and a number of other O.As mentioned in that judgement have been disposed by a common order. The judgement noted that a similar issue had already been decided in O.A. 364/86 J. Sharan Vs. Union of India. As in the present application, the applicant in O.A. 617/87 had signed a declaration on 28.7.1986. That applicant was on deputation with the RITES from 21.12.1981. The deputation period ended after three years on 21.12.1984. Nevertheless, he still continued to be in the RITES and he was told that it would be treated as "unauthorised with attendant consequences" unless option was given by him to get absorbed from the date of the completion of the sanctioned tenure. Accordingly, the applicant gave such a declaration on 28.7.1986 meaning thereby that his connection with the Railways be severed from the end of the sanctioned tenure i.e. 21.12.1984. This was accepted by the impugned order dated 3.3.1987 by which the sanction of the President was communicated for permanent

absorption of the applicant in RITES w.e.f. 22.12.1984.

This order was under challenge in that O.A. The position was similar in other O.As also. The Tribunal passed the following order:

"Consequently, we allow these O.As 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 retrospectively. This (sic) 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 judgement. The parties, in the facts and circumstances of the case, shall bear their own costs".

8. It is also to be mentioned that an objection of limitation was also raised in some O.As: This was overruled by the Tribunal on the ground that the applicants therein should not be deprived of the benefits that they are to get by the previous judgements of this Tribunal.

9. The learned counsel for the applicant, therefore, submits that the benefit of those judgements may be given to the applicant.

10. We notice that the applicant himself had sought for permission to sever his connection with the Railways from 17.9.1986 by his letter which is filed by the

respondent as Annexure R-1. One could perhaps, therefore, consider that in such circumstances, there should be no legal objection to accept the resignation, with effect from the date indicated, even if the acceptance is made on a subsequent date as in the present case. However, as a number of decisions have already been rendered on this issue, we are averse to press this view point as a disagreement with the observation. We respectfully agree with the earlier decisions and, therefore, we are of the view that this O.A. has also to be disposed of on the same lines as in these decisions.

11. The applicant has made a prayer for refund of some illegal recoveries made from the DCRG, with interest. It would appear that this prayer is totally unconnected to the main relief sought and the applicant has prayed for multiple reliefs. Nevertheless, we notice that in this regard an interim direction has been issued on 8.11.1990. We are, therefore, of the view that suitable observation should be made in this regard also while disposing of this O.A.

12. Accordingly, we dispose of this O.A. with the declaration that the applicant shall be treated to have resigned from the Railways only w.e.f. 22.12.1987 i.e. the date from which the impugned Annexure A3 notice was issued. The Annexure A-3 notice shall be read subject to this declaration. It is open to the respondents to take up the matter, if they so choose, with the RITES to amend the date of absorption of the applicant in the RITES consequent upon this declaration. We further direct that the applicant shall be given all benefits which would accrue to him consequent upon his resignation being made effective only w.e.f. 22.12.1987,

(B)

including terminal benefits by way of pensionary benefits etc. So far as the alleged illegal recoveries made from the DCRG are concerned, the applicant may make a representation to the respondents drawing their attention to the interim order already passed in this case. In case such a representation is made, we expect the respondents to dispose of the same within a period of two months from the date of receipt of that representation.

O.A. is disposed of as above.

C.J. Roy
(C.J. ROY)
MEMBER (J)

N.V. Krishnan
(N.V. KRISHNAN)
VICE CHAIRMAN (A)

'SRD'