

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 872/92

199

T.A.No.

DATE OF DECISION 30.6.98

Sh.R.E.Singh

....Petitioner

Sh.G.D.Bhandari

....Advocate for the
Petitioner(s)

VERSUS

Genl.Manager(NR)& Ors

....Respondent

Sh.P.S.Mahendru

....Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble Shri N.Sahu, Member(A)

1. To be referred to the Reporter or not?YES
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 872/92

New Delhi this the 30 th day of June, 1998

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri N. Sahu, Member(A).

R.E. Singh,
Manager (Elect.), IRCON,
Palika Bhawan,
R.K. Puram,
New Delhi.

.... Applicant.

By Advocate Shri G.D. Bhandari.

Versus

Union of India through

1. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta - 700 043.

2. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.

.... Respondents.

By Advocate Shri P.S. Mahendru.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the letter issued by the respondents dated 11.12.1985 whereby approval of the competent authority accepting his resignation/deemed retirement w.e.f 16.10.1983 has been communicated to him. The applicant states that he had submitted several representations right from 22.4.1986 but there is no response and no retiral benefits have been paid to him by the respondents. Hence this
O.A.

2. The applicant while working as Technical Assistant with the Railway Board joined the Indian Railway Construction Company Ltd. (IRCON) as a Technical Officer on 15.10.1980.

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He had joined the Railways as Trainee Chargeman (Electrical) on 23.4.1958 and had received due promotions in between. He submits that he was posted at IRCON on deputation initially for a period of one year from 15.10.1980 which was extended from time to time and he claims that his lien with the respondents continued. Shri G.D. Bhandari, learned counsel, has submitted that by the order issued by the respondents dated 11.12.1985 it has been stated that approval of the competent authority to the extension of period of deputation of the applicant for a further period of one year i.e. upto 15.10.1983 and acceptance of his resignation w.e.f. 16.10.1983 has been communicated (Annexure A-7). He submits that the respondents cannot accept the resignation of the applicant from a retrospective date i.e. 16.10.1983 by passing this order. He has also drawn our attention to the memo issued by IRCON dated 29.8.1985 in which they had asked the applicant whether he would like to be permanently absorbed with them w.e.f. 16.10.1983 in which case he had to fill up certain forms. In reply to this, the applicant had communicated that he would be willing for permanent absorption in IRCON w.e.f. 16.10.1983 and had accordingly written to the respondents quoting the same date. Learned counsel has, however, submitted that this cannot be held against the applicant because approval of the competent authority for extension of the period of deputation and acceptance of the resignation has been conveyed by the respondents only by the order dated 11.12.1985 and not earlier. He has also referred to the Office Order No. 404 of 1985 issued by IRCON dated 22.12.1985 conveying that the applicant who was on deputation with them as Technical Officer, having been deemed to have retired from South Eastern Railway w.e.f. 16.10.1983, has been permanently absorbed as Technical Officer with effect

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from the same date as Technical Assistant. The learned counsel, therefore, submits that the applicant has actually retired from service only on 22.12.1985 as conveyed to him by IRCON. The main claim of the applicant is that the respondents be directed to grant benefit of extension of the period of service beyond three years from 15.10.1983 and he may be deemed to have retired on 1.1.1986, i.e. after the recommendations of the IVth Pay Commission so that he can get the benefits of pay revision and pension. Shri Bhandari, learned counsel, has very vehemently submitted that the orders dated 11.12.1985 and 22.12.1985 should be read together and all that the Tribunal was required to do is to exercise its discretion to extend the date of retirement by another 8 days or so till the end of the month as the deemed date of retirement of the applicant. He has further submitted that although the applicant has been deemed to have retired from service as per the orders of the respondents themselves w.e.f. 16.10.1983, he has not received any retiral benefits for which he also seeks appropriate directions.

3. The respondents in their reply have controverted the above facts and have submitted that the application may be dismissed. We have heard Shri P.S. Mahendru, learned Counsel. He has submitted that the applicant has in his own representation dated 22.1.1991 accepted his resignation from the Railway Service w.e.f. 16.10.1983. He submits that in this letter he has also accepted receipt of certain amounts from the respondents. According to him, the applicant has been absorbed in IRCON w.e.f. 16.10.1983. He relies on the judgement of the Full Bench in B.K. Anand Vs. UOI. (CAT Full Bench (Vol.III) 225). In the reply the respondents have also submitted that the requisite forms for payment of SRPF

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dues have been handed over to the applicant in 1992 for filling up for arranging the payments of certain dues but have not been received back.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. While the contention of the learned counsel for the applicant that a person cannot be retired with retrospective effect is correct, we find that even from the records relied upon by the applicant, namely, the order dated 11.12.1985 read with the IRCON's office order dated 22.12.1985, the applicant cannot in any case be deemed to have retired from the service of the respondents w.e.f. 1.1.1986. Admittedly, these orders have been passed in December, 1985 i.e. before coming into effect of the 4th Pay Commission recommendations and nothing has been placed on record to show that the applicant would be entitled for the main directions prayed for in this application that he should be deemed to have retired on 1.1.1986. The further submissions of Shri G.D. Bhandari, learned counsel that the Tribunal should relax the intervening period as it is only a few days so that the applicant is deemed to have retired on 1.1.1986 so that he can get the benefits of the revision of pay in terms of the recommendations of the IVth Pay Commission ^{is untenable.} Such relaxation can lead to arbitrary exercise of power and is accordingly rejected.

6. From the reply filed by the respondents, it is not clear whether the amounts due to the applicant by way of SRPF have been paid to the applicant or not. If this has not been done, the respondents shall take immediate action to pay

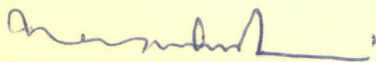
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the same to the applicant, for which the applicant shall also complete the necessary formalities in accordance with the rules and instructions.

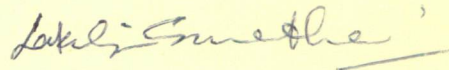
7. In the result, for the reasons given above the prayer of the applicant that he shall be deemed to have retired from service of the respondents w.e.f. 1.1.1986 is rejected. However, any SRPF amount due to the applicant, if not already paid, shall be paid by the respondents within one month from the date of receipt of a copy of this order.

No order as to costs.



(N. Sahu)
Member (A)

SRD



(Smt. Lakshmi Swaminathan)
Member (J)