

19

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A.No. 761/1993

New Delhi this the 26th Day of July 1999.

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri H.L.Sharma
S/o Shri B.R.Sharma
(Ex.Suptd. B/R Grade II
M.E.S. Ministry of Defence)
C/o Dr. J.C. Madan,
B-56, Pandara Road,
New Delhi - 110003.

Applicant.

(By Advocate: Shri J.C.Madan)

VERSUS

1. Union of India
Through Secretary,
Ministry of Defence,
South Block, New Delhi-1.
2. The Engineer-in-Chief,
M.E.S. Army Headquarters,
Ministry of Defence,
Kashmir House,
Rajaji Marg, New Delhi-110011.
3. The Chief Engineer,
Western Command Headquarters,
Engineers Branch,
Chandimandir - 134107
(Haryana)
4. The Garrison Engineer,
Shimla Hills,
Kasauli (H.P)

Respondents

(By Advocate: Shri K.R.Sachdeva)

20

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman (A)

We have heard Shri J.C.Madan, learned counsel for the applicant and Shri K.R.Sachdeva, learned counsel for the respondents.

62
2. The applicant joined in MES as Superintendent Gr.II in October 1963. He had applied for the post of Assistant Engineer during July 1975 through proper channel. He was selected for the post and was relieved by the Department on 1.11.1976. He was told at that time that his lien was kept by the respondents initially for a period of two years which could be extended by one more year i.e., upto 31.10.79. It is not in dispute that he had not resigned from the post of Superintendent while he joined as Assistant Engineer in Himachal Pradesh Housing Board. He continued to function in the Himachal Pradesh Housing Board. We are now informed that by an order dated 30.3.99 he has been confirmed by the Himachal Pradesh Housing Board with effect from that date. After he joined the Himachal Pradesh Housing Board he did not revert back to the MES. However, the DPC which was constituted to consider confirmation of various employees against the permanent posts met in 1985 and had recommended confirmation of the applicant with effect from 1st April 1976 on which date he was actually serving in the MES prior to his repatriation to Himachal Pradesh Housing Board. While making this confirmation, the DPC had also noted that the applicant's lien was terminated with effect from 31st October, 1979. Subsequently however the Department took the view that such retrospective confirmation in his case was not in order and issued a show cause notice to him dated 24.4.92 seeking to cancel the order of confirmation and deconfirm

21

him. The applicant submits that in response to show cause notice at Annexure A9 he filed a representation. After considering this representation, the respondents proceeded to issue the order dated 30th August, 1992 as at Annexure A-2 canceling his confirmation which is impugned in the present OA.

3. Shri Madan, learned counsel for the applicant submits that the action of the Department is totally against the law. The respondents were aware that his lien was terminated with effect from 31.10.79. However, they confirmed him with effect from 1.4.76 as on that date he was very much in position in MES. The delay in the confirmation of the applicant from 1963 to 1976 is on account of the administrative lapse and he cannot be penalised for the same. The applicant was declared as quasi permanent and his lien was maintained with effect from 31st August, 1979 but the confirmation has taken effect from a date prior to his repatriation. The present OA was filed on 30th August 1994 and he had come to the Tribunal within one year after the order of deconfirmation. He contends that the application deserves to be allowed and the impugned order as at Annexure A-2 should be set aside and the earlier orders dated 14th September 1995 which had confirmed him with effect from 1.4.76 should be restored. He further says that such restoration in the confirmation of the applicant would give certain benefits in the matter of retiral benefit when he would eventually retire from service.

62 4. Shri K.R.Sachdeva, learned counsel for the respondents resists the OA. He says that this Tribunal has no jurisdiction to entertain the present OA. According to him, the applicant was an employee of the Central Government upto 31st October, 1979 when his lien was terminated. He had

22

been relieved from the MES from 31st October, 1976 and the lien was kept initially for two years which could be extended by a maximum period of one year more and which expired on 31st October, 1979. He says that this case is barred by limitation and the Tribunal cannot entertain the present OA. The applicant also never reverted to the Department and as such the present OA is time barred as the cause of action had arisen more than three years before the constitution of the Tribunal.

Shri Sachdeva, submits that the order of the DPC was erroneous and following the due procedure, the deconfirmation order was issued. He submits that his lien had been kept by the Department for a period of three years. The DPC however proceeded to recommend his confirmation and when the mistake came to light, action was taken to rectify the same after following the prescribed procedure. He says that the reason given for deconfirmation is that the person who is temporary and who has left the Department for seeking better prospects cannot be confirmed as per the relevant instructions.

Shri Sachdeva says that while in absentia confirmation could be done in appropriate cases, in the present case the applicant left the Department in 1976 and never came back and as such he had no right for such retrospective confirmation.

5. We have carefully considered the contentions of both counsel and have also gone through the records. We reject the contention of the learned counsel for the respondents that this Tribunal has no jurisdiction to entertain the present OA. It is true that the applicant had left the Central Government Department as early as 31st October, 1976 and according to Shri Sachdeva, his lien also was terminated on 31st October, 1979. The Department had

23

confirmed the applicant from a date prior to 31st October, 1976 but it issued the order dated 30th August, 1992 by which having confirmed him earlier it proceeded to deconfirm him. The order of confirmation would confer certain rights to the applicant for his service in the Central Government which had been taken away by the impugned order. We hold that the cause of action arose only by the issue of impugned order and as such the Tribunal can entertain the present OA.

6. Shri Sachdeva also says that the applicant having left the Department in 1976 never came back and his lien also stood terminated on 31st October, 79 i.e. after a maximum period of three years from the date of repatriation. No rule has been shown to us which would bar the Department to issue the order of confirmation with retrospective effect. We find from the order dated 14th September 1985 as at Annexure A-3 that a number of others also had been confirmed retrospectively including those who had died or left the Department in any other manner. To illustrate in Sr.No.23 the applicant was confirmed with effect from 1st April, 1976 even though the lien was terminated with effect from 1st November, 1982 and also in Sr.No.35, a person who had voluntarily retired on 31st March, 1980 was confirmed with effect from 1st April 1976 when there was no question of his return to the Department. Shri Sachdeva states that the case of the other officials could have been different from the present one as they might have come back to the Department which the applicant had not done. No rule has been shown to us which makes it obligatory for a person to come back before he could be confirmed. We may also note the reason given in the deconfirmation order in para-2 is that the Ministry of Defence has observed that in absentia confirmation of an individual who was temporary and left

24

the Department is not in order. The only authority in support of this stand is that some instructions existed which procluded such inabsentia confirmation. The OM of Ministry of Home Affairs, Department of Personnel dated 25th July 1979 ^(Ann A 6) had clearly lifted the ban and it does not say that the ban is lifted only in respect of persons who would come back to the Department. We, therefore, do not find any merit in the contention that the applicant's case should be treated differently merely because he had not returned to the Department.

We do not also agree with the contention of the respondents that the DPC had proceeded on an erroneous basis while it confirmed the applicant retrospectively with effect from 1st April 1976. As has been brought out earlier, the order of the Department dated 14th September, 1985, as at Annexure A-3, notes that the lien of the applicant has been terminated earlier. As many as 225 persons were considered when the DPC had considered the applicant and it was aware that his lien had been terminated on 31st October 1979. This is also specifically brought out in the order dated 14th September, 1985 as at Annexure A-3. We reject this contention that the DPC's action was in any way irregular deserving to be set aside.

7. For the reasons stated above, we hold that the order dated 30th August, 1992 as at Annexure A-2 is not sustainable and accordingly we quash the same and direct that the order dated 14th September, 1985 as at Annexure A-3 revives and whatever benefits which would flow from this would be available to the applicant. Shri Madan says that with the revival of the order of confirmation the applicant is entitled to all consequential benefits such as pro-rate pension, gratuity and other retiral benefits. The Department shall examine this request in accordance with the relevant provisions and make

25

available to him whatever benefits are available in accordance with the relevant rules and instructions.

8. OA is finally disposed of with the above direction. No order as to costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member (J)

V. Ramakrishnan

(V. Ramakrishnan)
Vice Chairman (A)

Vtc.