

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 21.12.2000

O.A. No. 288/1996

Abdul Quaddus son of Shri Abdul Rahuf aged about 65 years resident of Muhallaiquan, Near Liaiquan Masjid, Jodhpur, last employed on the post of Highly Skilled Grade I, Shop No. 15, Ticket No. 1398 in Northern Railway, Jodhpur, on deputation to Indian Railway Construction Co. Limited (IRCON).

... Applicant.

v e r s u s

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Deputy Chief Mechanical Engineer (Works), Northern Railway, Jodhpur Division, Jodhpur.
3. The Managing Director, Indian Railway Construction Co. Limited, (A Govt. of India Undertaking) Palika Bhawan, Sector 13, R K Puram, New Delhi.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant seeks for a direction to the respondents that the lien of the applicant in the Railway could not be terminated without resignation and there can be no absorption of the applicant in Indian Railway Construction Company Limited (IRCON, for short) from any date prior to the date of issuance of sanction/approval



by the Government. The applicant accordingly prayed for quashing of the impugned order Annexure A/1. The applicant also prays for a direction to treat the applicant as having retired from the Railway ^{department with} effect from 30.09.89, the date of his actual superannuation, or in the alternative from the date of issue of sanction of the retirement, i.e. 4/89, with all consequential benefits.

2. The applicant stated that he was first appointed in the Northern Railway, Jodhpur Division, Jodhpur, on 22.09.51 as Semi-skilled Painter. Thereafter, he earned promotion to the Highly Skilled Grade I Painter on 27.07.81 and in the year 1981, he was sent on deputation to IRCON Project in Iraq for a period of 30 months, and accordingly, he joined IRCON office on 29.07.81. The applicant further contended that the said period of deputation with IRCON came to an end on 31.01.84 and, therefore, he requested the authorities for repatriation to India in his permanent office. He was sent back to the IRCON office in India. He made several representations for his repatriation in the parent office vide Annexures A/2 to A/6 respectively, but he was not repatriated. Thereafter, he was compelled to sign a letter for absorption in the IRCON from a retrospective date, i.e. with effect from 24.07.84. He stated that he was not given his option or willingness for absorption in IRCON. However, the Railway department/given post facto sanction for his absorption in IRCON with effect from 24.07.84, treating the applicant as having retired from the Northern Railway with effect from 24.07.84. Thereafter, the applicant retired from IRCON with effect from 30.09.89, but he was sanctioned pension @ Rs. 377/- per month without any dearness relief. The applicant also stated that he was not paid any pension from the year 1992, inspite of his several requests. In substance, the applicant stated that since he never gave his willingness for absorption in IRCON, he shall be taken as retired from the Northern Railway with effect from 1989. Accordingly, there should be a direction to the respondents, as prayed for in the application.



3. By filing replies, the respondents have denied the case of the applicant. The respondents Nos. 1 and 2 have filed a common reply and the respondent No. 3 filed a separate reply. In the reply, the respondents Nos. 1 and 2 stated that the applicant was promoted from the stage of Fitter in Northern Railway Workshop to the post of Skilled Painter and, thereafter, he was promoted as Highly Skilled Painter Grade II on 30.12.78 and he was further promoted to the post of Highly Skilled Painter Grade I with effect from 01.08.78. The respondents further stated that the applicant having been selected by the IRCON for the purpose of sending him to Iraq alongwith the team, the service of the applicant was spared on 24.07.81 to report/the IRCON on deputation, back with a clear condition that the applicant should come/to the Railway department at the end of three years and in his failure to do so, he would be treated as absorbed in IRCON and his further absence would be treated as unauthorised absence in the Railway department. The applicant completed his 3 years term on 24.07.84 in IRCON, but he did not join back in the Railway department. Thereafter, he did not make any representation until the year 1988. In the year 1988, he sent one representation dated 28.07.88, requesting for his repatriation to the Railway department. It appears that thereafter, he gave his willingness for permanent absorption in IRCON on 22.08.84, by giving an undertaking to that effect, and accordingly, he was absorbed in IRCON. Thereafter, he was promoted in IRCON in the grade of Rs. 550-750 vide Annexure R/7, and thus the applicant has availed all the benefits in the IRCON after his final absorption and after his deemed retirement from the Railway department with effect from 24.07.84. They have also stated that the applicant during his deputation period in Iraq earned handsome amount and he has enjoyed all the benefits according to the rules in IRCON and accordingly, he has retired. The respondents Nos. 1 and 2 have also filed Anexure R/7, the absorption of the applicant in IRCON, vide letter dated 02.09.88 with effect from 24.07.84. The respondents have denied

that the applicant was absorbed in IRCON with effect from 1989, but in fact, he was absorbed in IRCON on 24.07.84. They have also produced such order of absorption vide Annexure R/8 dated 13.04.89, and accordingly, the applicant accepted such absorption by giving an undertaking vide enclosure to Annexure R/8. Thus, the respondents Nos.1 and 2 contended that the applicant's case that he should be deemed to have been retired in the Railway department as on the date of his superannuation, misconcieved. Accordingly, the application deserves to be dismissed.

4. Reiterating the same stand taken by the respondents Nos. 1 and 2, respondent No. 3, filed separate reply, stating that after some correspondence, the applicant had given undertaking for absorption in IRCON vide his undertaking dated 22.08.84 (Annexure R/1). The respondent No. 3 also stated that the IRCON refused the repatriation of the applicant to the Railways vide letter dated 9.2.88, and accordingly, the applicant was absorbed vide Annexure R/3 dated 2/9/88. His absorption in IRCON was from 24.07.84. Such an absorption was approved by the Railway department vide their letter dated 11.04.89 (Annexure R/4), with effect from 24.07.84. For such absorption, the applicant profusely thanked IRCON vide his letter dated 01.05.89. The respondent No. 3 submitted that on his voluntary undertaking for absorption, the applicant had been absorbed in the IRCON. He has further stated that there was no coercion or threat on the part of the respondent No. 3, and absolutely there was no reason why such threat, should be exercised by them. The respondent No.3 further stated that after being permanently absorbed, the applicant earned further promotion, and thereafter, he retired in the year 1989 and all his retiral benefits were fixed and PPO was sent to the concerned bank. But the applicant, for the reasons best known to him. did not contact the bank for drawing his pension. He himself had not drawn the payment and final ^{settlement} dues. However, vide Annexure

R/14, he has been paid all the dues after the Bank returned the PPO to this respondent. Thus, the respondent No. 3 stated that the prayer of the applicant that he shall be deemed to have retired from the Railway department does not arise. Accordingly, there are no merits in this application and the application is liable to be dismissed.

5. From the controversy raised in this case, the short point that requires to be decided by us is whether the applicant shall be taken as if he retired from the Railway as on the date of superannuation notwithstanding his actual absorption in the IRCON vide letter of IRCON dated 13.04.89 vide Annexure R/5A.

6. The applicant did not deny that he had given the undertaking vide Annexure R/1 dated 22.08.84, expressing his willingness for absorption in the IRCON. It is also not denied that vide Annexure R/3 dated 2.9.88, the applicant gave the following undertaking:-

"Sir,

Sub: Absorption of staff in IRCON.

Consequent upon decision of Indian Railway Construction Company Limited, to permanently absorb me in the Company with effect from 24.07.84, I hereby give my undertaking for my deemed retirement from the Northern Railway w.e.f. 24.07.84 (F.N). I also hereby undertake to sever all my connection with Northern Railway w.e.f. 24.07.84 as a result of my permanent absorption in public interest in IRCON w.e.f. 24.07.84."

7. But the contention of the applicant is that this letter was taken from him under duress. It is also not in dispute that vide Annexure R/4 dated 11.04.89, the Railway department also issued post facto sanction for his absorption in IRCON with effect from 24.07.84. Acknowledging this letter, the applicant expressed his gratitude in his letter dated 01.05.89 vide Annexure R/5, as under :-

"The Managing Director,
Indian Railway Construction Company Limited,
Palika Bhawan, Sector XIII,
R.K. Puram, New Delhi.



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Respected Sir,

Sub: Request for change of designation from Painter to 'Artist'.

With reference to your office order No. 293/89 dated 13th April, 1989, I am thankful to your goodself for absorbing me in IRCON in scale Rs. 550-750. I may further request you to kindly designate me as 'ARTIST' instead of Painter for which act of your kindness I shall remain grateful and obliged.

Thanking you,

Yours faithfully,
Sd/-
(Abdul Quddus)
Artist/IRCON
1.5.89 "

8. From these facts, it is clear that the applicant voluntarily accepted his absorption in IRCON and accordingly, he was absorbed in IRCON vide order dated 13.04.89, but with effect from 24.07.1984, i.e. the first joining date after deputation to IRCON. From these documents, it cannot be held that there was any coercion or threat either on the part of the IRCON or on the part of the Railway. Thus, the applicant had become permanent employee of IRCON on his absorption. Accordingly, he retired from IRCON. He has also received retiral benefits from IRCON and at this later stage, seeking a relief that the applicant shall be deemed to have retired from the Railways as on the date of superanuuation on 30.9.89, does not arise. The applicant on his deputation has received all payments, including handsome salary in Iraq. In these circumstances, he is estopped to put forth any other contention contrary to the absorption that he has accepted voluntarily, in IRCON.

9. Moreover, the applicant retired on 30.09.89, whereas the present application is filed on 20.8.96. Accordingly, *prima facie*, it is barred by limitation. Even the impugned order vide Annexure A/1 that he has sought for quashing is dated 04.04.89. If that is so, the applicant

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applicant should have approached this Tribunal within one year, i.e. before the end of April, 1990, whereas he has filed this application in the year 1996 and thus, there is inordinate delay. Even there is no application for condonation of delay also. However, the learned counsel for the applicant relying upon the judgement/order of the C.A.T., Principal Bench, New Delhi, dated 20.11.92 in OA No. 280/88 and the batch, contended that the lien of the applicant in the Railway department could not have been terminated with retrospective date. At any rate, the applicant's absorption in IRCON was not voluntary, therefore, it is taken that the lien continued in the Railway department, in view of the law declared by the Principal Bench of C.A.T, in this judgement/order. But we are not persuaded to accept this contention also for more than one reasons. In this case, the applicant accepted the absorption in IRCON vide his undertaking Annexure R/3 dated 02.09.88. He has further stated in the said undertaking that all his connections with the Northern Railway would stand severed with effect from the date of his absorption in IRCON. Even the Railway department had given its approval for absorption of the applicant vide Annexure R/4 dated 11.04.89, but with effect from 24.07.84. For all these acts of both the Railway department as well as IRCON, the applicant has expressed his thanks vide letter Annexure R/5 dated 01.05.89. From these circumstances, it is clear that his absorption in IRCON became final. A person could revoke or withdraw his option before it is accepted, but once it is accepted, such person cannot seek withdrawal of his absorption in IRCON, and the same has been the law laid down by the C.A.T, Principal Bench, in OA No. 280/88 and the batch (cited supra).

10. From the above facts, it is clear that the said judgement of C.A.T, Principal Bench, does not help the applicant, and on facts it is distinguishable from the facts of the case on hand. Accordingly, pass the order as under:-



"Application is dismissed. But in the circumstances, without costs."

Gopal Singh

(GOPAL SINGH)
Adm. Member

RAIKOTE

(JUSTICE B.S. RAIKOTE)
Vice Chairman

CVR.

Enclosure,
KIC/MS
11/2001

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Part II and III destroyed
in accordance on 3.1.2002
under the supervision of
section officer () as per
order dated 1.1.2002

Section officer ()