

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH
LUCKNOW

O.A. No. 271/1989(L)

N.M.Tripathi

Applicant

versus

Union of India & others

Respondents.

Shri M.P. Sharma

Counsel for applicant.

Shri K.D. Nag

Counsel for Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.

Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was working as A.S.M./Daliganj and later on ASM Lucknow junction in grade of Rs 330-560. He was allowed by the Railway Administration to continue his studies and acquired the Degrees of LL.B and LL.M. The applicant was looking for the better prospects, he applied for his appointment as Lecturer in Harish Chandra Degree College, Varanasi and applied for leave to resume his duties as Lecturer in Law where he joined on 22.3.77 with due intimation to the Railway Administration. He requested for lien in the Railway Department. Later on he joined Jainarain Degree college, Lucknow. Before his joining the application of the applicant was sent and forwarded by the department. The applicant while joining the new assignment wrote the following letter to the Railway Administration:

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"I hereby submit my understanding to you, so that I shall either resign or get back to my parent job after expiry of the terms of the two years of the retention of the lien as per Railway Board letter No. E/NG/1168/AP/6 dated 4.12.86."

The applicant joined the institution and continued to work. On 3.2.1977 the applicant stated that he was offered the post of Lecturer in Harish Chandra college, Varanasi and that he wished to join there for future prospects and he should be relieved. While joining the same institution the applicant sent a letter to the Divisional Superintendent in which he requested that he may be relieved initially for two years and arrangement for intimating ^{him} the amount of contribution payable from time to time during the period of deputation be made, for maintaining his lien in the Department. After expiry of two years on 1.9.79 he sent a letter stating that the period of two years has since expired and he has not been confirmed, he shall be much obliged, if the period of lien is extended for a period of one year. Thereafter no application was moved by the applicant and the applicant was absorbed in the Jain Narain Degree College, Lucknow. Thereafter he moved an application stating that he shall be grateful if his case for voluntary retirement is considered and pensionary benefits granted to him and the period from 22.3.77 till

his retirement may be treated as Extraordinary Leave and the payment of retiral benefits may be given to him.

2. ~~xxxxxx xxxxxxxxx xxxxxxxxx xxxxxxxxx xxxxxxxxx~~ The Railway Administration gave reply the application vide letter dated 21.8.86 that the period with effect from 22.3.77 is deemed to have been resigned from service. Against this order, the applicant treating himself to be removed from service, after exhausting the remedies, approached this Tribunal praying that the ~~said~~ order may be treated as Null and void and ultra vires. On behalf of the respondents it has been stated that on expiry of two years the applicant will be deemed to have ~~xxxx~~ resigned. There is no question of voluntary retirement. The learned counsel for the applicant contended that when the applicant joined the said Institution, he did so with the permission of the department and joined the institution only then as he duly intimated the Department when he joined the Institution. The respondents never replied to the application of the applicant that the period ~~xx~~ will be treated as deputation and after expiry of two years the applicant's claim for extension of lien will cease. Thereafter the applicant slept over the matter and did not move any application. The railway administration also did not give any reply that the period of lien was not permitted to be extended. The applicant resigned from service and he was absorbed there

and when the absorption was taken up the Railway Administration also did not reply. In support of his contention the learned counsel for the applicant referred to a case of Allahabad High Court in V.N.Pandey vs. Union of India and another (AIR 1984, Allahabad 10) in which a similarly placed teacher in the very same college also moved the application claiming the same relief. The facts of the case are that the teacher resigned after completing about 20 years of service and an application was moved by him that he was appointed as Lecturer in Jai Narain Degree College and he was in service, he requested to the Divisional Superintendent(P), N.E.Railway, Lucknow to allow him to take up the job of Lecturer in Law undertaking that he would fulfil all the conditions laid down by the Railway Board for officers going to deputation. The Divisional Superintendent Lucknow accepted the request of the petitioner to proceed on deputation as Lecturer in Law in Jai Narain Degree College for a period of two years. In this case there was no such order that the deputation has been allowed. It may be that by some implication the period could not be treated as on deputation although when the applicant sent the application with permission of department the period will be deemed to be the period of deputation. Thereafter the application for extension of leave was moved. That was not allowed. He gave the undertaking although he did not resign from the post. The applicant was treated as if he resigned from the post. The applicant sat over the matter and thus ceased to be employee of the Railway Administration. It will not be a case of abandonment as the applicant had gone to a degree college with the knowledge of the Railway Administration and was working. Instead of resigning which he was bound to do, in view undertaking given he preferred to move an application for extension and then kept quiet, he can't go against the undertaking.

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The applicant joined the services in the college which is governed by the Universities Act and it cannot be said that the University is controlled by the Govt. It is a Corporation. The mistake is there on the part of both the parties. As the applicant did not take any action for a long ^{time}, obviously the status of the applicant as government servant came to an end from the date of absorption. Accordingly, the applicant cannot claim pensionary benefits or other benefits but in view of the fact that the applicant served for 13 years, the Railway Administration is responsible for the mistake committed. It is expected that the Railway Administration will give to him the benefits, ^{at least 12 years and} whatsoever admissible to him for a period of 13 years, ^{as he was} _{who has not been removed or dismissed from Railway} Service.

The application is disposed of as above with no order as to costs.


A.M.


V.C.

Shakeel/

Lucknow: Dated: 14.7.92