

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

(19)

JUDGEMENT IN O.A. Nos. 272/88
286/88 &
350/88

Shri A K B Pillai (Applicant in OA 272/88)

Shri Sunderesa Gopalswamy (Applicant in OA 286/88)

Shri R.H.Karmarkar (Applicant in OA 350/88) Applicants

Vs

1) General Manager
Western Railway
Churchgate, Bombay

2) Indian Railway Construction Co.Ltd.
Palika Bhavan,
Sector XIII R.K.Puram,
New Delhi.

.... Respondents.

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

Shri L. M.Nerlekar
Advocate for applicants

Shri N.K.Sriniwasan
Advocate for respondents.

Dated: 13/6/91

Judgement

(Per: Shri Justice U.C.Srivastava, Vice-Chairman)

In these three connected cases the question of law arises and the facts are much similar but for some variation. Consequently they are being disposed of together.

2. All these persons were employees of South-Eastern Railway and were absorbed in Indian Railway Construction Company Limited (IRCON). They have challenged their absorption with retrospective affect and have also prayed for a declaration that they be deemed to have been absorbed with effect from the date of issue of order and they be deemed to be on deputation with respondent No.2 till the date of issue of absorption order and also for consequential benefits.

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3. In OA 272/88 the applicant who was employed in Western Railway as Inspector of Works, was selected and his services were placed at the disposal of IRCON on deputation and it was for a period of three years. The applicant was given option either to accept deputation allowances or the grade offered by IRCON in lieu of deputation allowances and the applicant opted the second one viz the grade. He was sent on deputation with effect from 25.4.1979. Although the deputation period of three years came to an end on 24.4.1982, he was allowed to continue as there were no orders regarding his repatriation. IRCON made representation to the General Manager, Western Railway, to extend the period of deputation from 23.4.1982 to 30.4.1985 and that the applicant should be deemed to have been absorbed in IRCON with effect from 1.5.1985. The proposal was not accepted by the General Manager, Western Railway. He directed IRCON either to absorb the applicant permanently in IRCON with effect from 23.4.82 or repatriate him to his parent department. The applicant was not relieved by IRCON and he was permanently absorbed with IRCON with effect from 9-12-1985. As it was the issue of the order under retrospective effect & was to effect pensionary benefit adversely IRCON wrote to G.M. Western Railway that the applicant be treated as absorbed with effect from 1.5.1985 instead of 1.9.1984, to enable him to have the benefit of liberalised pensionary benefits. In view of the retrospective operation of the order he was given pension of Rs. 335 per month and arrears of Rs.18,179.30 and commutation value of Rs.47,154.60 upto January 1986. He has stated that he was discriminated as like deputationists such as Smt. Lalita K. Raman; Shri P F Mallick and G C Sharma were given extension of deputation period to enable them to have the benefit of liberalised pension rules. A reference to OA No.371/86 decided by Central Administrative Tribunal, New Delhi Bench dated 18.9.1987 ~~held that~~ was also made in which it was held that purely administrative order cannot have retrospective

4. In OA 286/88 the applicant Sunderesa Gopalaswamy, was an employee of South Eastern Railway. He was sent on deputation to IRCON with effect from 23.2.80 and has completed the three year deputation as on 23.2.83 and yet his services in the parent department were terminated. He made a representation in this connection and the result of which was awaited. He filed this application in the Tribunal on 30.4.1988. The applicant thereafter prayed the respondents that the principle laid down by the Tribunal be applicable to him. But the respondents stated that the judgment is applicable to only those applicants who filed the application and succeeded. In his case absorption order was passed on 6.2.1986 and he went on deputation with effect from 23.2.1980 and joined as Technical Officer in the IRCON. The deputation period came to an end on 2.3.1983 and he requested for repatriation but he was not relieved by the IRCON. He submitted representation dated 6.6.84 and was informed by IRCON that they are considering his absorption in November 1984. Therefore, he submitted his resignation and the same was forwarded by IRCON to his parent organisation. During the pendency of the resignation, the applicant was promoted as Inspector of Works Gr.I in March 1984 by South Eastern Railway, Nagpur. His resignation was accepted in December 1985 with effect from March 1983. He made a representation that his resignation be effected from 1.5.85 instead of 1.4.84, to enable him to avail of liberalised pensionary benefits. The South Eastern Railway accepted his resignation dated 10.9.1985 on 30.12.85 with retrospective effect from 22.3.1983 instead of 23.2.1983. Ultimately he was absorbed with effect from 23.2.1983 by IRCON. He made a representation dated 19.2.1988 to the Railway Administration and the new employer against the retrospective operation.

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5. In OA 350/88 the applicant R H Karmarkar, was an employee of Central Railway, Bombay V.T. He was sent on deputation to IRCON with effect from 27.12.1982 for a period of three years and the said three year deputation period came to an end on 26.12.1985 whereas he filed this application in the Tribunal on 3.5.88. He was absorbed in IRCON on 22.12.1985 vide letter dated 22.12.1986. His grievance is that his deputation should ^{be} deemed to have been extended upto 12.10.87 and the order should not be given retrospective effect which is detrimental to him. But for the dates all other facts are same as in OA 286/88 and the applicant has prayed that the benefit given by the Tribunal judgment in the case of Shri P M Venkatesan in OA 381/86 should be made applicable to him.

6. Apart from taking the plea of limitation the defence of the Respondents is that the judgment of the Tribunal dated 18.9.87 does not apply in their cases. They further contended that the Railway Administration has not extended their deputation beyond three year period and they were informed that the Railway Board has not accepted the proposal for extension and that IRCON was informed that deputation period beyond 3 years was unauthorised. A request for their absorption in IRCON with effect from the date of order was not accepted. The Railway Board desired that the employees concerned may be absorbed in IRCON from the date when the 3 year deputation came to an end, and that their retention beyond three years is unauthorised. The Railway Board had also desired that the employees concerned may be either absorbed permanently in the said Company i.e., IRCON on expiry of three years deputation period or repatriate them to the Railways. The respondents state that the benefit of 568 point additional DA was introduced from 1.11.1984 and the applicants are deemed to have retired from railway service prior to that date and hence they are not entitled or eligible for the benefits of additional DA. The order in

question contended is denied as not a retrospective order and stated that it is a formal order issued to enable the applicants to get their retirement benefits.

5. The defence in all these three cases is more or less identical. On behalf of the applicant the contention is that the case of deputation of employee has been decided by the Principal Bench of the Tribunal and the same should be applicable to others also. In the case of P M Venkatesan V Union of India, the applicant was also an employee of Railways and went on deputation to IRCON and was subsequently absorbed. In the said case taking into consideration the earlier case and the case of Shri Sharan V Union of India (O.A. 364/87) it was held that the said order dated 11.11.1985 is purely an administrative order and can not have retrospective effect. No explanation for inordinate delay on the part of the respondent No.1 in accordance with the requisite sanction is forthcoming. The instant appears to be a case of individual discrimination as the deputation period of some other persons, viz., Smt. Lalitha K. Raman, Shri P R Mallick and G C Sharma etc., was extended in order to enable them to have the benefit of liberalised pension rules. In that case the respondents contested that the petitioner cannot reagitate the matter because according to OM of Department of Personnel and Training the period of deputation of the petitioner could not be extended and he had to be absorbed from the date when he completed his specified period of deputation.

6. On behalf of Respondents reliance was placed on the case of Bangalore Bench of the Tribunal in Application No.1553/88(F) R M Kantharajan V Union of India & Others, reported in ASLJ 1990(1) (CAT) page 65. In the said case also the same question was involved. In that case the applicant

was an employee of Indian Audit and Accounts Services and was sent on deputation to Bharat Electronics Limited. It was held in that case also that the absorption should be ~~by~~ prospective because otherwise the foreign service contribution paid for the period cannot be refunded under F.R. 120 and ~~with this~~ ^{with} cause a loss to employee. It was further observed that the question of absorption, if unresolved for long, would gravely jeopardise, the service interests of the concerned employees, both in the parent department, as well as in the organisation to which an employee is deputed, in that, their inter-se seniority would remain nebulous. It was observed that the sanctity of maximum limit was violated as specified in the policy in regard to the term of deputation so as to give chance to an employee, like the applicant to artfully manipulate his date of absorption, in a public sector undertaking, according to his whim and caprice speculating all the while, his monetary gain, in his post of deputation, qua that in his parent department, which cannot be allowed in the administrative interest and discipline. The said case is distinguishable on the facts as will be evident for its narration made above. In the said case the applicant did not exercise his unconditional option within the period in regard to his absorption and communicate the same to the concerned authority. Again the competent authority has indicated that no further extension would be allowed. He requested for a change in date of absorption as many as six times regardless of maximum period of 3 years some time prospectively and more often with conditions. As such the said ^{decision} is not applicable in the present cases before us.

7. We agree with what has been decided in the case of P M Venkatesan V Union of India by the Principal Bench of the Tribunal. Accordingly the cases are allowed with the following order:

The order dated 11.11.1985 is set aside to the extent it operates retrospectively.

The petitioners be deemed to have been absorbed permanently with IRCON with effect from 11.11.85 and they shall be deemed to be on deputation with IRCON (Respondent 2) till then.

The petitioners are entitled to all the consequential benefits due to their absorption from 11.11.85 by way of salary and pension etc. There would be no order as to costs.