

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH



Original Application No. 648/93
Transfer Application No.

Date of Decision : 18.7.95

N.G.Sinha

Petitioner

Mr. Mohammed Ayyub

Advocate for the
Petitioners

Versus

UOI & 2 ors.

Respondents

Mr. P.N. Chandurkar

Advocate for the
respondents

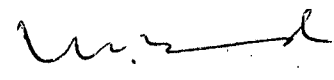
C O R A M :

The Hon'ble Shri Justice M.S. Deshpande, Vice Chairman

The Hon'ble Shri P.P. Srivastava, Member (A)

(1) To be referred to the Reporter or not ? —

(2) Whether it needs to be circulated to
other Benches of the Tribunal?


Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

CIRCUIT SITTING AT NAGPUR

O.A.NO.648/93

N.G.Sinha

..Applicant

V/s

Union of India & 2 ors.

..Respondents

Coram: Hon.Shri M.S.Deshpande, V.C.

Hon.Shri P.P.Srivastava, Member(A)

Appearance:

Mr. Mohammed Ayyub

Counsel for the applicant

Mr. P.N.Chandurkar

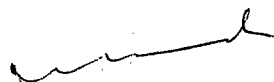
Counsel for the respondents

ORAL JUDGMENT:

Dated: 18.7.95

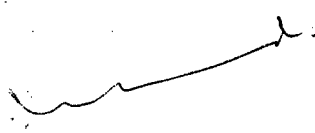
(Per: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the order dated 6.3.86 suspending his lien and his absorption w.e.f. 15.2.83 retrospectively and seeks a direction to the respondents to absorb him from 6.3.86, the date on which the approval of option was communicated to him by the competent authority and for fixation and drawal of salary from 15.2.83 to 6.3.86 and pensionary benefits from 1.1.86 under



the liberalised pension rules and for damages for the monetary loss caused to the applicant.

2. The applicant was appointed as Apprentice Assistant Inspector of Works on 24.11.1962 and he was stated to have retired on 15.2.1983. The applicant was sent to IRCON, office of Respondent no.3. The applicant sent an undated letter to the General Manager, South-Eastern Railway, Respondent no.1 to absorb him as Technical Officer in Gr. Rs.700-1200 in IRCON New Delhi vide letter dated 20.11.84 with effect from 1.9.84 and that he should be deemed to have retired from the Railways in public interest from that date. On 26.12.84 the Deputy Manager, IRCON sent a letter to the General Manager of South Eastern Railway intimating that it was decided to absorb the applicant in IRCON w.e.f. 1.9.84 pursuant to his consent and requested that sanction of the competent authority may be obtained for permanent absorption of the applicant at IRCON in public interest so that further action could be taken in the matter and his deputation should be extended from 15.2.83 to 31.8.84. A letter was sent by the Chief Personnel Officer, South Eastern Railway, in pursuance to the request received from IRCON accepting that request and intimating that the

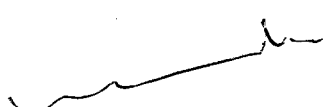


(15)

.3.

applicant should be deemed to have retired from railways w.e.f. 1.9.84 and terminating his lien with effect from that date. The applicant had given an undated undertaking for his deemed retirement with effect from 14.2.83 and to sever all his connections with South Eastern Railway w.e.f. 14.2.83 as a result of his permanent absorption in public interest in IRCON w.e.f. 15.2.83. The applicant had sent a representation dated 11.11.91 to the respondents and a reminder on 24.3.73 protesting against his retrospective retirement and since no reply was received the applicant has approached the Tribunal for the aforesaid reliefs.

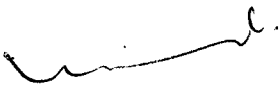
3. There is a series of decisions by the Tribunal beginning from the decision in OA NO.280/88 V.N.AHUJA Vs. UNION OF INDIA decided on November 20, 1992 by the Principal Bench holding that resignation or retirement could not be with retrospective effect and the absorption cannot be automatic since it was necessary to get the approval of the employer on the resignation or retirement and an administrative order could not operate retrospectively. A Division Bench of this Tribunal at Delhi in O.A. No.171/86 P.N.VENKATESAN Vs. UNION OF INDIA & Ors. decided on 18.9.87 an additional factor



which weighed with the Tribunal was that there ~~was~~ invidious discrimination as the deputation period of some other persons was extended in order to enable them to have the benefit of liberalised pension rules and it was directed that the petitioner there shall be deemed to have been absorbed permanently with Respondent no.2 with effect from the date of the order by which the retirement was granted retrospectively. A similar view was taken by this Tribunal in other decisions and this view was also followed in OA No.636/93 RAGHUNATH SHANKAR WANI Vs. UNIUN OF INDIA & ORS. decided on 7.9.93, to which one of us (M.S.Deshpande, J) was a party.

4. The matter is no longer resintegra and clearly an adminisrative order which was passed on 6.3.86 could not be given retrospective effect and the applicant would be deemed to have been on deputation upto 6.3.86 and absorbed only prospectively from 6.3.86 with IRCON.

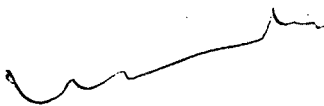
5. Ld. counsel for the respondents urged that the present application is barred by time. It is apparent from the petition that a representation was sent by the applicant on 11.11.91 and though the present OA was filed on



.5.

9.6.93 a reminder was sent on 24.3.93. Ordinarily the O.A. should have been filed within 18 months of the sending of that representation i.e., by 11.5.93. The representation was not answered by the respondents despite reminder dated 21.3.93. There is no answer to this in the written statement filed by the respondents to these averments and even if there is a delay of 28 days we would condone that delay in the circumstances of the case.

6. In the result we quash and set aside the order dated 6.3.86 suspending the lien and absorption of the applicant in IRCON w.e.f. 15.2.83 and direct the respondents to allow the absorption from 6.3.86 i.e., the date of communication of the approval of option from the competent authority. We further direct that if the amounts payable to him on this basis towards salary and allowances together with increments from 15.2.83 to 6.3.86 and the pensionary benefits from 1.1.86 under the liberalised pension rules shall also be calculated and granted to him on the basis that the absorption of the applicant from 6.3.86. These amounts shall be calculated and paid to the applicant within a period of two months from the date of



communication of this order. No order as to costs.



(P.P. Srivastava)

Member(A)



(M.S. Deshpande)

Vice Chairman