

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 937/89  
T.A. No.

199

DATE OF DECISION 31.1.1991.

<u>Shri Balram Malik</u>	Petitioner
<u>Shri J.C. Singhal</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Others.</u>	Respondent
<u>S/Sh.S.N.Sikka &amp; K.K. Khurana</u>	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. T.S. Oberoi, Member (J)

The Hon'ble Mr. I.K. Rasgotra, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *NO*

*I.K. Rasgotra*  
(I.K. RASGOTRA)  
MEMBER(A)  
31.1.91.

*T.S. Oberoi*  
(T.S. OBEROI)  
MEMBER(J)  
31.1.91.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.937/89

DATE OF DECISION: 31.1.1991.

SHRI BALRAM MALIK

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANT

SHRI J.C. SINGHAL, COUNSEL

FOR THE RESPONDENTS

SHRI S.N. SIKKA AND SHRI K.K.  
KHURANA, COUNSEL

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE

MR. I.K. RASGOTRA, MEMBER (A)

Shri Balram Malik, Section Officer (Accounts), Northern Railway who was initially sent on deputation vide order dated 13.7.1989 to Indian Railway Construction Company (IRCON) has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the rejection of his representation by respondent No.3 vide order dated 8.8.1988 (Annexure A-1) regarding settlement of his terminal benefits with bank rate of interest consequent to his absorption in IRCON. The absorption of the applicant in IRCON has followed a tortuous route as is evident from the following facts.

The applicant was sent on deputation for a period of three years vide respondent No.3 S.O.O. No.133 dated 13.7.1979 (Annexure A7). He joined IRCON on 20.7.1979 while the applicant was on deputation, he was placed on the select list for promotion to the post of Assistant Accounts Officer vide order dated 21.12.1982 (Annexure A-9). He was promoted as Assistant Accounts Officer in IRCON while still on deputation under the

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Next Below Rule (NBR) w.e.f. 31.3.1983 after period of three years' deputation with IRCON had expired on 20.7.1982. The Northern Railway wrote a number of letters to the respondent No.4 M/s. IRCON to release the applicant to enable him to join his parent department, if he has not been absorbed in the IRCON. The applicant, however, was not repatriated but was advised by the borrowing company on 20.11.1984 (Annexure A-15) that he would be absorbed as Accounts Officer w.e.f. 1.9.1984 in the grade of Rs.840-1200. He was further asked to sever his connection with his parent department and submit request for deemed retirement from that department in the prescribed proforma made available to him. The applicant gave his consent for absorption from 1.9.1984 but later requested for absorption w.e.f. 1.5.1985 vide his application dated 28.3.1985 (Annexure A-16). Based on the recommendation of IRCON, the Northern Railway, respondents No.2 and 3 accepted applicant's request for absorption w.e.f. 1.5.1985 vide S.O.O. No.220 dated 2.5.1985 (Annexure A-17). In view of the permission granted by respondent No.2 for permanent absorption in IRCON w.e.f. 1.5.1985 in public interest, the applicant was deputed by the IRCON to serve in Iraq on 30.5.1985. While the applicant was in Iraq, IRCON vide their letter dated 22.8.1985 (Annexure A-19) advised that since his absorption w.e.f. 1.5.1985 involved extension of his period of deputation with IRCON beyond three years, the Railway Board have not agreed to IRCON's proposal for extension of his deputation period beyond three years and have directed that either Shri Balram Malik should be absorbed permanently w.e.f. 14.7.1982 or repatriated to his parent department on the Railway. The applicant was accordingly, requested to convey his willingness in the enclosed

22

11

proforma for his permanent absorption in IRCON on expiry of his three years deputation i.e. w.e.f. 14.7.1982. He was advised to furnish his willingness by 7.9.1985. In response the applicant submitted his unconditional option for absorption in IRCON w.e.f. 14.7.1982. He also wrote separately a letter to respondent No.3, FA & CAO, Northern Railway.

The applicant submits that he has conveyed his option for absorption in IRCON in view of the circumstances in which he was placed at that time while working in Iraq. However, despite the revised offer no decision was communicated about his absorption to him till he sent in his application virtually revoking his offer of absorption w.e.f. 14.7.1982 (Annexure A-20). He submits that his date of option was altered several times i.e. first it was 1.9.1984. Later vide formal order permission was conveyed as requested by him for absorption from 1.5.1985 and finally he was asked to convey his option for absorption w.e.f. 14.7.1982. Having done all this, his case still remained undecided and consequently he became liable to suffer heavy loss by way of interest and pensionary benefits etc. which have since undergone substantial improvement. He, therefore demanded that if he is to be absorbed retrospectively, he was no more interested in absorption unless he is paid 100% commuted value of pension at the bank rate of interest. Since no decision was forthcoming, this letter was followed by his letters dated 6.7.1988, 1.2.1988 in which he revoked his option for absorption w.e.f. 14.7.1982. He did not hear any thing in the matter till he received Northern Railway S.O.O. 386 dated 6.7.1988 from Northern Railway that the applicant has been absorbed in IRCON w.e.f. 14.7.1982.

2

Reacting to the sanction so conveyed, the applicant vide his letter dated 8.8.1988 (Annexure A-1) accepted the offer of absorption subject to payment of interest of his settlement dues with retrospective effect i.e. 14.7.1982. His grievance is that he has not received any response to this letter so far.

By way of relief the applicant has prayed that his date of absorption in IRCON should be 6.7.1988 i.e. the date of issue of orders of absorption. Alternatively, if the date of absorption is to be taken as 14.7.1982, he should be paid interest on his terminal benefits at the rate of 14% from 14.7.1982 to 2.2.1989 - the date of actual payment.

3. Shri J.C. Singhal, the learned counsel for the applicant stressed the following aspects in the course of his submissions. First that the applicant's absorption from 1.5.1985 was approved by the Northern Railway vide their S.O.O. No.220 dated 2.5.1985 and this order was taken as a conclusive proof that the applicant's request for absorption w.e.f. 1.5.1985 has been accepted. The said order is reproduced below:-

"English Translation of A-17.

Northern Railway,  
Headquarter Office,  
Baroda House,  
New Delhi.

S.O.O. No.220 dated 02-05-85.

Permission of the General Manager is accorded to the permanent absorption in IRCON of Sh. Balram Malik, Asstt. Account Officer (Under NBR) and to his resignation from Railway service w.e.f. 01-05-85 in public interest.

Authority: Order file No. 80/Admn/C/29/1  
absorption, Abstract page No.21."

The learned counsel submitted that this was a conclusive contract and it could not have been unilaterally revoked by one of the parties to the contract on the plea, that the Railway Board has not agreed to extend the deputation beyond the period of

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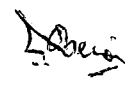
three years. Secondly, although the period of deputation expired on 14.7.1982, but the applicant was continued on deputation w.e.f. 31.3.1983. He was allowed the benefit of NBR while on deputation beyond three years. Further, no communication was sent to the applicant telling him to seek repatriation to the parent department as it was not possible either to change the date of absorption or to extend the period of deputation. The entire correspondence was between the respondents and IRCON. Thirdly, the learned counsel submitted that identical matters have been decided by the Tribunal in **P.N. Venkatesan v. Union of India & Ors. (OA-371/86)** decided by the Principal Bench on 18.9.1987 and in **J. Sharan v. Union of India & Ors. (OA-364/86)** decided by the Tribunal on 9.9.1987. He, therefore, submitted that although his case is fully covered, he is willing to accept either of the alternatives as prayed for in the reliefs. The common stream in the case of **J. Sharan** (supra) and **P.N. Venkatesan** (supra) and in the present case is that the period of deputation expired after three years and certain specified dates for absorption in the respective organisations were given by the petitioners and later they sought to resile from the option in absence of any decision regarding absorption in the borrowing organisation to avail of improved terminal benefits. In both the decided cases as also the case under consideration the orders for absorption were issued by the respondents after considerable delay but made effective retrospectively. The only distinctive feature of the case under consideration is, that there was consensus ad idem regarding 1.5.1985 as date of absorption of the applicant vide S.O.O. No. 220 dated

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2.5.1987. The contract was concluded on 1.5.1985. This order was not a mere expression of the desire of the parties as to the manner in which the transaction will in fact be effected. This was an enforceable contract. This contract was repudiated by the parent department unilaterally inasmuch as that the applicant who was posted in Iraq was told to exercise option from a revised date retrospectively viz. 14.7.1982. In the situation in which he was in Iraq, he succumbed to the demand that as it may, once the contract for absorption w.e.f. 1.5.1985 is repudiated the case is on all fours with the case of **J. Sharan & P.N. Venkatesan** (supra). We, therefore, need not go again into all the points agitated in the application including IRCON having not been notified under Section 14 (2) of the Act and in the written statement of the respondents. For reasons recorded in **Shri J. Sharan** (supra), we hold that the Northern Railway S.O.O. No.386 dated 6.7.1988 (Annexure A-2) being purely an administrative order can not operate retrospectively with effect from 14.7.1982. No explanation for inordinate delay on the part of respondent No.1 to 3 in according the sanction for absorption is forthcoming. Consequently, we allow this application and set aside the order NO. S.O.O. 386 dated 6.7.1988 to the extent it operates retrospectively. We further direct that the petitioner shall be deemed to have been absorbed permanently with respondent No.4 w.e.f. the date of the said order i.e. 6.7.1988 and he shall be deemed to be on deputation with respondent No.4 till then. The applicant shall also be entitled to all the consequential benefits flowing from the absorption w.e.f. 6.7.1988 by way of salary, pension etc.

There will be no order as to costs.

  
(I.K. RASGOTRA)  
MEMBER(A) 31/1/91

  
(T.S. OBEROI)  
MEMBER(J)