

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DATE OF DECISION 20.11.92.

Regn.No. Name of the applicant VS. Name of the respondents
S/Shri

1) DA 280/88 V.N. AHUJA U.O.I., N.RLY
WITH
DA 2459/88 V. SATYA MURTHI U.O.I., M/O RAILWAYS
DA 1418/88 K.L. SETHI U.O.I., M/O RAILWAYS
DA 1002/88 R.K. GARG U.O.I., M/O RAILWAYS
DA 997/88 RESHAM SINGH U.O.I., M/O RAILWAYS
DA 1049/88 RAMESH CHAND U.O.I., G.M.RAILWAYS
DA 2458/88 T.SIVARAMAKRISHNA U.O.I., M/O RAILWAYS
MURTHY
DA 987/88 RAJ KARAN SINGH U.O.I., M/O RAILWAYS
DA 1077/88 Y.L. DOGRA U.O.I., M/O RAILWAYS
DA 1022/88 R.K. GUPTA U.O.I., M/O RAILWAYS
DA 1060/88 A.P. NARANG U.O.I., G.M., N.RLY.
DA 978/89 N.N. SEETHARAM BHATT U.O.I. M/O RAILWAYS
DA 1431/88 M.D. KHATTAR U.O.I., M/O RAILWAYS
DA 1061/88 G.I. KAKKAR U.O.I., M/O RAILWAYS
DA 991/88 S.P. SAREEN U.O.I., M/O RAILWAYS

contd.2..

O.A. 1005/88 I.S. AGGARWAL VS. UOI, M/O RAILWAYS

O.A. 1006/88 M.B.L. JOSHI VS. UOI, M/O RAILWAYS

O.A. 988/88 J.C. NARANG VS. UOI, M/O RAILWAYS

O.A. 1059/88 HANUMAN PASAD PURHIT VS. UOI, M/O RAILWAYS

O.A. 1032/88 N.K. MUKHERJEE VS. UOI, M/O RAILWAYS

O.A. 1030/88 PREM NATH BIRD VS. UOI, M/O RAILWAYS

O.A. 1071/88 BALBIR SINGH MAHENDRA RATTI VS. UOI, M/O RAILWAYS

O.A. 2456/88 HANSRAJ CHOUHARY VS. UOI, M/O RAILWAYS

O.A. 2457/88 K.K. SHARMA VS. UOI, M/O RAILWAYS

O.A. 2460/88 K. GOVINDAN VS. UOI, M/O RAILWAYS

O.A. 1446/88 S. JAYARAMAN VS. UOI, M/O RAILWAYS

SHRI Y. PRABHAKAR RAO .. Counsel for all the
SHRI ROMESH GAUTAM APPLICANTS

SHRI I.C. SUHIR

SHRI S.N. SIKKA .. Counsel for all the
M/S. A.K. SINGLA & CO. RESPONDENTS.

SHRI K.K. PATEL &

Ms. Majula Gupta for IRCON.

CORAM

The Hon'ble Mr. Justice Ram Pal Singh,
Vice Chairman (J)

referred to in the The Hon'ble Mr. I.P. Gupta, Member (A)

referred to earlier and 1. Whether Reporters of local papers may be

allowed to see the judgment?

Judgment will be referred to the Reporter or not? Yes,

permitted to advise and to give only the basic facts

JUDGMENT

as and addressed as follows and having regard to the

DELIVERED BY HON'BLE SHRI I.P. GUPTA, MEMBER (A)

to whom it is addressed and having regard to the

Contd. 3..

and a few other circumstances, it is

The aforesaid OAs are being disposed of by this common order since the issues raised in them are similar in nature. The applicants joined Indian Railways and worked in the Railways in different capacities. The Government of India established a Public Sector Undertaking called Indian Railway Construction Company Limited (IRCON).

The applicants were deputed from the Railways to

IRCON. The deputation was for a specified period.

Later, the Undertaking (IRCON) decided to consider

absorption of deputationists in the Undertaking

itself. The applicants were asked to give their

options for getting absorbed. The applicants gave

the options. In most of the cases seeking of options

was done prior to the expiry of the period of deputation

but there are also some cases such as that of

Prem Nath Birdi [O.A. No. 1030/887 where the option

was asked after the expiry of the period of deputation.

After having given the option to get absorbed from a

particular date, the applicants later revised their

options in regard to permanent absorption once or

more than once. Such changes were made with a view

to claiming enhanced pensionary benefits in terms of the recommendations of the Fourth Pay Commission duly accepted by the Government of India.

2. The contention of the Learned Counsel of the applicants is that change of option regarding date of absorption could be made any time before acceptance and in any case the letter of the Railway Authorities conveying their approval to the acceptance of the resignations of the applicants consequent upon their permanent absorptions in IRCON

could not have a retrospective effect. It is seen

that after the approval to the acceptance of resignations by the Railway Authorities from retrospective

date, IRCON issued an Office Order deeming the applicants to have retired from railway service from

retrospective dates as given in the communications of

the railway authorities and permanently absorbing

the applicants in IRCON in public interest from retrospective dates.

3. The reliefs sought are -

- (i) Issue of direction to the respondents to absorb the applicants from the date of issuance of the sanction of the

(ii) Declaration that the applicants be
dealt with according to the provisions of the
Railways Act 1925 and to make arrangements for the
date of issuance of the sanction

to be harmonised with the date of issue
by the Government.

To be issued to the applicants by

(iii) Issue of direction that the liens of

participants would be to operate from the date of issue of

the applicants in the Railways could

not be terminated without resignations.

not be terminated without resignations.

4. The Learned Counsel for the applicants conten-
tended that by the very nature of things the exercise of

retirement and the employment and in effect

option by an employee was only an offer of his service

which is enforceable from the date of issue

to be absorbed under the said undertaking in public

sector and is enforceable in law and also

interest. The Government cannot force retrospective

action to encourage and to facilitate such

absorption. The applicants have every right to resile

and to rescind their offer of absorption

from the offer which they had given. The Government

and the applicants both had equal right and

could not accept the offer from retrospective date

and both had equal right and the right of resile

to the detriment of the employees.

To the respondents side of making the public statements

5. The Learned Counsel for the respondents contended

that the Learned Counsel for the applicants was right in

that IRCON was a Public Sector Undertaking and did

not have the power to make any arrangements and

not come under the purview of the Tribunal. The absorp-

tion was to be made by IRCON and no direction as such

could be given to IRCON to absorb the applicants from

the respondents and the respondents to issue (1)

specified dates. Nor can such a direction be issued

and the respondents and the respondents to issue (2)

and to be issued to the applicants to

by the Tribunal to the effect that the applicants

are entitled for absorption by IRCON from a date

to be indicated.

On 12th June 1966, while the above pleases were not disputed by

IRCON, before the (A.R.), the Learned Counsel for the applicants, he contended

that the lien of the applicants could not be terminated

by the order of termination issued by the railway authorities until they had

acquired a valid acquired lien in IRCON. IRCON could issue the order

for absorption only after receipt of approval from

the concerned railway authorities.

Similarly, the Learned Counsel for the respondents

argued that the acceptance of resignation by the railway authorities to the acceptance of resig-

nations or retirements of the applicants and such

resignations or retirements cannot be given a retrospective effect

according to which to the detriment of applicants. Therefore, the

Learned Counsel had argued that his case was against

the order of termination issued by the railway authorities under whom their lien could

not be terminated retrospectively.

On 12th June 1966, The Learned Counsel for the respondents brought

to notice, pointing out that the applicants with a view to fulfilling

their personal interest and claiming enhanced pensionary

benefits in terms of the recommendations of the Fourth

Reirement and pension Commission, had given an option

to the concerned railway authorities to make a proposal to the

Ministry of Railways for absorption by IRCON though they had given in the first

order of termination issued by the concerned railway authorities

an option to the concerned railway authorities to make a proposal

to the concerned railway authorities to make a proposal

which a part will instance their clear option for absorption from a

specified date. He also said that option once ex-

and the judge's decision could not be changed and was final. In

According to rule 117(13) of IREM (Vol. I)

... based on the 1980 (Revised Edition - 1989) but we must say at this stage

but *we* *lives* *itself* *that* *the* *rule* *is* *not* *relevant* *in* *the* *present*

...in the several cases because that rule relates to fixation of pay

Learned Counsel for the respondents further

and the Board argued that the Railway Board had clarified that per-

for 115, 000 the permanent absorption of railway employees in IRCON would

add the parties to continue to be effective from the date of completion

and need of three years' deputation period unless competent auth-

rities approval was obtained for extension of deput-

tion period as per the existing policy. In this

connection they invited attention to the Ministry of

Finance's letter dated 22nd September, 1972 some

which has been made, extracts of which are reproduced below :-

1. To emphasize that the undersigned is directed to invite the attention of the administrative Ministries/Delegated Authorities to the orders issued by the Bureau of Public Enterprises from time to time, stipulating time limits for exercise of option between revert to the parent cadre and absorption in the concerned enterprise, by the deputationists from the Govt. services to various public enterprises. As the Ministries are aware, the time-

limits for exercise of option have been prescribed on the basis of the decision taken at the highest level. It is, therefore, imperative that the option orders are implemented most strictly, and requests for extension of deputation beyond the prescribed limit under the orders, as a rule, turned down by the administrative Ministries."

9. The Railway Authorities had also by their letters dated 10th July, 1985 and 10th September, 1985 made it clear to IRCON that they would be unable to agree to the extension of deputation of railway staff. The Railway Authorities had stated that the employees should either be absorbed permanently in the Railways or be sent back to IRCON on completion of three years deputation period along with 30 per cent of core posts or returned with IRCON against 30 per cent of core posts or returned to their railway departments in exchange of new employees who should be deputed now for a period of three years only. In the letter of 10th September, 1985 it was also added that in case an employee was not willing to get himself absorbed in IRCON from the date of completion of three years' deputation period, he should be repatriated to the Railways immediately and the question of regularisation of his services would not be raised after the expiry of the excess period of deputation would be taken up suitably with the Department of Personnel. The

Learned Counsel for the respondents, therefore said
additionally that the applicants had addressed
to the court that the applicants were fully aware of the fact
that the probationary period was to be completed and
thereafter that they would be absorbed on completion of depu-
tation and became eligible for absorption and
that the probation period of three years and they had tendered
their unconditional options for permanent absorption

additionally that the applicants had addressed to the court that
from a specified date and such dates could not be
earlier than 10th April 1964, the probation period
altered. What the railway authorities did was only
to give the applicants an option to accept or decline
to convey approval to the acceptance of the resigna-
tion. There was no indication to the applicants that the
options from the dates for which the options had been
communicated had been altered or modified
given. Therefore the retrospectivity was with ref-
erence to the options of the applicants.

10. The short point involved in this case is

whether the letter of the railway authorities

according approval to the acceptance of resigna-

tion was to be done from the date of first option

or from the date of second option or from the date of

the date of according of approval by the railway

authorities or before the date of first option

the options given by the applicants were later

communicated to the railway authorities for acceptance such changes were

changed by them once or more than once but before

the date of according of approval by the railway

authorities.

On next exhibits and documents the learned counsel for the

10. The Learned Counsel for the respondents

and the learned counsel for the respondents cited the case of J. Sharav v/s Union of India

and Others. [O.A. No. 364/86] in a similar case

relating to another Public Sector Undertaking

namely Rail India Technical and Economic Services

Limited (RITES). It was observed therein that the

order relating to the absorption of the petitioners

would be operative in its own course from the date

on which it was issued. It was purely an adminis-

trative order and could not operate retrospectively

to the prejudice/detriment of the petitioner who

must be deemed to have been continued on deputation

with RITES till his final absorption. The Bench,

therefore, held that the lien of the petitioner

on his cadre post in the parent department stood

terminated with effect from the date of the Presidential

order and he was declared as entitled to all consequen-

tial benefits in respect of salary and pension etc,

if any, flowing therefrom. The

Learned Counsel for the respondents said

that the present application was distinguishable in

that case willingness was asked for absorption

in RITES. The exercise of the option constituted merely

an offer to be considered for absorption. In these

seen cases the IRCON had decided to absorb the applicants

and they gave unconditional options for permanent

absorption in IRCON from a retrospective date.

said 12. We do not find any difference in situation.

13. The very fact that the order of the Railway authorities

was issued conveying approval to the acceptance of

resignations or retirements of the applicants showed

that the absorption was not automatic or else there

was no need for approval. If there was need for

approval it clearly implies that the resignation or

the retirement could have been refused also. Or else

the according of approval was redundant. The point

to be seen is as to when the applicants severed their

connections with the railway authorities. Until the

approval of the railway authorities issued it cannot

be said that

the applicants cut themselves asunder from their

office unless the option given by them by itself

absorption according to any rule meant absorption in IRCON as such.

14. If such a meaning is to be assigned to their options

it leads to then the communication of the approval of the railway

authorities and subsequent issue of an order by IRCON

not deeming the applicants to have retired from railway

service from a retrospective date were meaningless.
in fact in these cases

The option/did not constitute a complete and opera-

tive termination of the link with the railways in the

absence of any rule of instructions to that effect.

The general principle is that in the absence of anything
to the contrary in the provisions governing the terms
and conditions of office, an option in writing sent to

the competent authority can be withdrawn or altered

any time before it becomes effective that is before

it effects termination of the tenure of his employment.

But in the present case application was made thus that

Any such termination cannot/be from a retrospective date
but from the date of the letter which was dated 10-1-63.

to the detriment of applicants.

13. The arguments of the Learned Counsel for the

respondents is that the deputation was for a specified

period and the applicants should have either reverted

to the parent cadre or got absorbed and the deputation

could not be extended, are also not tenable since there

or repatriating
were no specific orders relieving/the officers on

expiry of the period of deputation. In fact, the

organizations where they were deputed continued to

utilise their services.

14. The law having been well-settled in the case of

28/1/1992

Passenger train services and other services of the Railways
-13-

Secondly by an order of the Central Government dated 20th January 1992

J. Sharan (Supra), we direct that the lien of the
and all liabilities and debts held by the Railways against
applicants in the parent department cannot be

settled till the date of termination of their services or
treated as terminated from a date prior to the
date the railway authorities issued their approval

Secondly by an order of the Central Government dated 20th January 1992
to the acceptance of resignation or retirement of

as far as possible as holding responsible to the Railways by
the applicants.

Secondly by an order of the Central Government dated 20th January 1992

15. The applicants will be entitled to all
accrued or past benefits received by them under the
consequential retiral benefits in so far as the

liabilities of the Railways are concerned in regard
to such benefits. With this direction the cases

are liable to be decided and as
are disposed of with no order as to costs.

and not decided herewith and the following cases

to be decided by the Central Government and held in abeyance

I.P. Gupta 2 **Ram Pal Singh**
Member (A) 20/1/92 Vice-Chairman (J)

not disposed of by the Central Government and as

not disposed of by the Central Government and as

not disposed of by the Central Government and as

True Copy Attest

of the Central Government dated 20th January 1992

PRITAM SINGH
Court Officer
Central Administrative Tribunal
Principal
Lokman House, New Delhi

to be held in abeyance till the date of the hearing