IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DATE OF DECISION 20.11.92.

Regn.No.	Name of the applicant S/Shri	VS.	Name of the respondents
1) PH OA 280/88	V.N. AHUJA		U.O.I., N.RLY
WITH			
OA 2459/88	V. SATYA MURTHI		U.O.I,M/O RAILWAYS
OA 1418/88	K.L. SETHI		U.O.I.,M/O RAILWAYS
OA 1002/88	R.K. GARG		U.O.I.,M/O RAILWAYS
OA 997/88	RESHAM SINGH		U.O.I.,M/o RAILWAYS
OA 1049/88	RAMESH CHAND		U.O.I.,G.M.NRAILWAYS
OA 2458/88	T.SIVARAMAKRISHNA MURTHY		U.O.I.,M/O RAILWAYS
OA 987/88	RAJ KARAN SINGH		U.O.I.,M/O RAILWAYS
OA 1077/88	Y.L. DOGRA		U.O.I.,M/O RAILWAYS
OA 1022/88	R.K. GUPTA		U.O.I.,M/O RAILWAYS
OA 1060/88	A.P. NARANG		U.O.I., G.M., N.RLY.
OA 978/89	N.N. SEETHARAM BHATT		U.O.I. M/O RAILWAYS
OA 1431/88	M.D. KHATTAR		U.O.I., M/O RAILWAYS
OA 1061/88	G.L. KAKKAR		U.O.I.,M/O RAILWAYS
OA 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 PUROHIT	VS. UOI, M/O RAILWAYS
O.A. 1032/88	N.K. MUKHERJEE	VS. UOI, M/O RAILWAYS
O.A. 1030/88	PREM NATH BIRDI	VS UOI, M/O RAILWAYS
O.A. 1071/88	BALBIR SINGH MAHENDI-RATTA	VS. UOI, M/O RAILWAYS
O.A. 2456/88	HANSRAJ CHOUDHARY	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 APPLICANTS

SHRI ROMESH GAUTAM
SHRI I.C. SUDHIR
SHRI S.N. SIKKA
M/S. A.K. SINGLA & CO.
SHRI K.K. PATEL &
Ms. Majula Gupta
for IRCON. .. Counsels for all the RESPONDENTS.

CORAM

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

The Hon'ble Mr. I.P. Gupta, Member (A)

1. Whether Reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not? Yes.

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J U D G M E N T

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

Contd.3..

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. 1030/88] 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 entitled to be absorbed from the date of issuance of the sanction by the Government.

(iii) Issue of direction that the liens of the applicants in the Railways could not be terminated without resignations.

4. The Learned Counsel for the applicants contended that by the very nature of things the exercise of option by an employee was only an offer of his service to be absorbed under the said undertaking in public interest. The Government cannot force retrospective absorption. The applicants have every right to resile from the offer which they had given. The Government could not accept the offer from retrospective date to the detriment of the employees.

5. The Learned Counsel for the respondents contended that IRCON was a Public Sector Undertaking and did not come under the purview of the Tribunal. The absorption was to be made by IRCON and no direction as such could be given to IRCON to absorb the applicants from specified dates. Nor can such a direction be issued

by the Tribunal to the effect that the applicants are entitled for absorption by IRCON from a date to be indicated.

6. While the above pleas were not disputed by the Learned Counsel for the applicants, he contended that the lien of the applicants could not be terminated by the railway authorities until they had acquired lien in IRCON. IRCON could issue the order for absorption only after receipt of approval from the railway authorities to the acceptance of resignations or retirements of the applicants and such acceptance cannot be given a retrospective effect to the detriment of applicants. Therefore, the Learned Counsel had argued that his case was against the railway authorities under whom their lien could not be terminated retrospectively.

7. The Learned Counsel for the respondents brought 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 Pay Commission kept on changing the option/date of permanent absorption by IRCON though they had given in the first

instance their clear option for absorption from a specified date. He also said that option once exercised could not be changed and was final. In this connection he quoted rule 117(13) of IREM (Vol.I) (Revised Edition - 1989) but we must say at this stage itself that the rule is not relevant in the present cases because that rule relates to fixation of pay of Ex-Combatant Clerk. The other rule quoted viz.2023(7) of IREM(Vol.II) is also not relevant as that relates to exercise of option for drawal of pay on deputation.

8. The Learned Counsel for the respondents further argued that the Railway Board had clarified that permanent absorption of railway employees in IRCON would continue to be effective from the date of completion of three years' deputation period unless competent authorities' approval was obtained for extension of deputation period as per the existing policy. In this connection they invited attention to the Ministry of Finance's letter dated 22nd September, 1972 some extracts of which are reproduced below :-

> "The undersigned is directed to invite the attention of the administrative Ministries/ Departments to the orders issued by the Bureau of Public Enterprises from time to time, stipulating time limits for exercise of option between reversion 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, imperditive 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 30th 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 employees should either be absorbed permanently in IRCON on completion of three years deputation period 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 the excess period of deputation would be taken up suitably with the Department of Personnel. The

Learned Counsel for the respondents, therefore said that the applicants were fully aware of the fact that they would be absorbed on completion of deputation period of three years and they had tendered their unconditional options for permanent absorption from a specified date and such dates could not be altered. What the railway authorities did was only to convey approval to the acceptance of the resignations from the dates for which the options had been given. Therefore the retrospectivity was with reference 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 resignations of the applicants or their retirement could be done from retrospective date/notwithstanding the fact that /the options given by the applicants were later changed by them once or more than once but/before the date of according of approval by the railway authorities.

10. The Learned Counsel for the respondents cited the case of J. Sharma 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 administrative 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 consequential benefits in respect of salary and pension etc, if any, flowing therefrom.

11. The Learned Counsel for the respondents said that the present application was distinguishable as in that case willingness was asked for for absorption in RITES. The exercise of the option constituted merely an offer to be considered for absorption. In these

cases the IRCON had decided to absorb the applicants and they gave unconditional options for permanent absorption in IRCON from a retrospective date.

12. We do not find any difference in situation. 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 presumed that the applicant cut themselves asunder from their office unless the option given by them by itself according to any rule meant absorption in IRCON as such. If such a meaning is to be assigned to their options then the communication of the approval of the railway authorities and subsequent issue of an order by IRCON 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 operative termination of the link with the railways in the absence of any rule or 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 at any time before it becomes effective that is before it effects termination of the tenure of his employment. thus Any such termination cannot be from a retrospective date to the detriment of applicants.

13. The arguements 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 were no specific orders relieving or repatriating 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

J. Sharan (Supra), we direct that the lien of the applicants in the parent department cannot be treated as terminated from a date prior to the date the railway authorities issued their approval to the acceptance of resignation or retirement of the applicants.

15. The applicants will be entitled to all 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 disposed of with no order as to costs.

I.P. Gupta
Member (A).

Ram Pal Singh
Vice-Chairman (J)

20/11/92

True Copy. Attested

PRITAM SINGH
Court Officer
Central Administrative Tribunal
Faridkot House, New Delhi

20/11/92