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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

DATE OF DECISION 20.11.92.

<u>Regn.No.</u>	<u>Name of the applicant</u>	<u>VS.</u>	<u>Name of the respondents</u>
1) PH DA 280/88	S/Shri 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.N RAILWAYS
DA 2458/88	T.SIVARAMAKRISHNA MURTHY		U.O.I., M/O RAILWAYS
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.L. 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 PUNHIT 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- VS. UOI, M/O RAILWAYS  
RAITA  
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 .. Counsels 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)

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,

JUDGMENT

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

Contd.3..



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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



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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 -

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



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(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 absorp-

tion 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 termi-

nated 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 resig-

nations 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 option

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, 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 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



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Learned Counsel for the respondents, therefore said  
that the applicants were fully aware of the fact  
that they would be absorbed on completion of depu-  
tation 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 resigna-  
tions from the dates for which the options had been  
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-  
tions 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. Sharm v/s Union of India



and Others [O.A.No.364/86\_7] 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.

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



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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 opera-

tive 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 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, or 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



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 20/11/92 Ram Pal Singh  
Member (A). Vice-Chairman (C)

True Copy

PRITAM SINGH  
Central Administrative Tribunal  
Principal Bench  
Court House, New Delhi  
20/11/92