

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/5 Shri

1) PH 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 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..

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

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

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

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

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

D.A. 1030/88 PREMNATH BIRD VS. UOI, M/O RAILWAYS

D.A. 1071/88 BALBIR SINGH MAHENDI RATTA VS. UOI, M/O RAILWAYS

D.A. 1004/88 HANSRAJ CHAUDHARY VS. UOI, M/O RAILWAYS

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

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

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

SHRI Y. PRABHAKAR RAO RAVIET. 88/88 Counsel for all the APPLICANTS

SHRI ROMESH GAUTAM SHRI I.C. SUDHIR .. Counsel for all the RESPONDENTS.

SHRI S.N. SIKKA M/S. A.K. SINGLA & CO. SHRI K.K. PATEL &

Ms. Majula Gupta CORAM for IRCON.

SHRI RAM PAL SINGH, AS & CO. REPR. & CO. & COUNSEL FOR VICE CHAIRMAN (J)

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

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..

(22)

The aforesaid OAs are being disposed of by  
STANDER OF THE INDIA RAILWAYS. THE APPLICANTS HAVE

joined this common order since the issues raised in them  
are similar in nature.

THE APPLICANTS ARE

INDIAN RAILWAYS AND WORKED IN THE RAILWAYS IN

Different capacities. The Government of India

in 1980 established a Public Sector Undertaking called

Indian Railway Construction Company Limited (IRCON).

The applicants were deputed from the Railways to

and from IRCON to the Railways of India  
and to IRCON.

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 deputa-

tion 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

(RP)

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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 appellants 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 accep-

to the applicants with regard to their resignations  
of employment and making them eligible for  
the acceptance of the resignations of the applicants conse-  
quently to the date of their resignations in respect  
of which by letter dated 20th January 1994, the  
Railway Authorities issued an Office Order deeming the appli-  
cants to have retired from railway service from re-  
spective dates as given in the communications of  
the railway authorities and permanently absorbing  
the applicants in IRCON in public interest from re-  
spective 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**

**dated the day preceding the date when**  
**by the Government.**

**To be issued by the Government and**

**(iii) Issue of direction that the liens of**

**the applicants on the property of the Railways and**

**the applicants in the Railways could**

**not be terminated without resignations.**

**dated and signed and issued by the Government**

**4. The Learned Counsel for the applicants conten-**

**ting the said directions rights of吸收 and terminating**

**ded that by the very nature of things the exercise of**  
**rights of吸收 and terminating and the accept-**

**option by an employee was only an offer of his service**  
**to the Government and the Government could accept**

**to be absorbed under the said undertaking in public**

**service and the Government could not force him to give up his**  
**interest. The Government cannot force retrospective**

**absorption and the date of absorption could not be**  
**earlier than the date of acceptance of the offer of**

**absorption. The applicants have every right to resile**  
**from the offer which they had given. The Government**

**tried and failed to do so and the Government could not accept the offer from retrospective date**

**1977, 1978 and 1979 and the date of absorption could not be**  
**to the detriment of the employees.**

**to absorption and the date of absorption could not be**

**5. The Learned Counsel for the respondents contended**

**that the respondent has established his case that**

**that IRCON was a Public Sector Undertaking and did**

**not meet the criteria of PUSA as a consequence 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 date of absorption and no direction could be given to**

**specify dates. Nor can such a direction be issued**

**to the Government and the Government could not accept the**

**offer to absorb the applicants from the date of absorption**

**and to commence the absorption to**

by the Tribunal to the effect that the applicants

are entitled for absorption by IRCON from a date

to be indicated.

At para 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.

Similarly, the learned counsel for the applicants contended that the railway authorities to the acceptance of resign-

ations and retirements of the applicants and such

acceptance cannot be given a retrospective effect

which is likely to be to the detriment of applicants. Therefore, the

learned counsel for the applicants had argued that his case was against

the railway authorities under whom their lien could

not be terminated retrospectively.

At para 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 had chosen the option

of IRCON and the Pay Commission kept on changing the date of permanent

posting of such posts notwithstanding the

resigned willing to be absorbed by IRCON though they had given in the first

place the right to the other concerned authorities

to nominate and recruit the personnel

and the said persons were not doing any work

and were not being paid any wages.

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such as *Leptothrix* for instance their clear option for absorption from a

specified date. He also said that option once ex-

and be final. The **ercised** could not be changed and was final. In

...and in this connection he quoted rule 117(13) of IREM (Vol. I)

... (Revised Edition - 1989) but we must say at this stage

but you can itself that the rule is not relevant in the present case. The rule is not relevant in the case of the fixation of pay because that rule relates to fixation of pay.

8. The Learned Counsel for the respondents further

...the learning outcomes and respondents further

Visible from the road, argued that the Railway Board had clarified that per-

That's why the permanent absorption of railway employees in IRCON would be a good idea for the industry.

... continue to be effective from the date of completion

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

Other than the 1977 budget, no additional budgetary and personnel authori-  
ties approval was obtained for extension of deputa-

tion period as per the existing policy.

trip and established a connection they invited attention to the Ministry of

Finance's letter dated 22nd September, 1972 some

the following recording - extracts of which are reproduced below :-

The undersigned is directed to invite the

## One Step

transferred to selected cadre Departments to the orders issued by the Bureau of Public Enterprises from time to time, stipulating time limits for exercise of option between concerned and the existing cadre and reverting 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,

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 posts would be taken up suitably with the Department of Personnel. The

excess period of deputation would be taken up

immediately and the question of regularisation of

his posts would be taken up suitably with the Department of Personnel. The

excess period of deputation would be taken up

immediately and the question of regularisation of

Learned Counsel for the respondents, therefore said  
agreed with the applicants on the following:

Agreed that the applicants were fully aware of the fact  
one nightingale unit was to be established, i.e. on

the establishment of the said unit  
**that they would be absorbed on completion of depu-**  
**tating and thereby entitled to induction for**

**value as a probationary officer for a probationary period of three years and they had tendered**  
**their unconditional options for permanent absorption**

**to the concerned officer and the concerned unit will be**  
**responsible for the same.**

**from a specified date and such dates could not be**  
**more than 30 days after the date fixed by the concerned**  
**unit.**

**altered. What the railway authorities did was only**  
**to give the option and the concerned unit could not do so.**

**to convey approval to the acceptance of the resigna-**  
**tion of the applicants to be done by the concerned unit.**

**from the dates for which the options had been**  
**given to the concerned unit the concerned unit could not do so.**

**given. Therefore the retrospectivity was with ref-**  
**erence to the options given to the applicants.**

**concerned unit could not do so.**

**10. The short point involved in this case is**  
**whether the letter of the railway authorities**

**to the concerned unit to accept the resignation**  
**of the applicants to be done by the concerned unit**

**according to the acceptance of resigna-**  
**tion of the applicants to be done by the concerned unit**

**of the applicants or their retirement could**  
**be done by the concerned unit to do so according to the date of first option**

**be done from retrospective date notwithstanding the fact**  
**that the concerned unit could not do so.**

**that**  
**the options given by the applicants were later**  
**altered by them once or more than once but before**  
**the concerned unit to do so.**

**the date of according of approval by the railway**  
**authorities.**

**to do so.**

**10. The Learned Counsel for the respondents**  
**affirmed the aforesaid by his learned friend**

**cited the case of J. Sharman 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

in accordance with the order issued by the President must be deemed to have been continued on deputation

case 40 deals 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.

On 11.11.1986 at 11.00 The Learned Counsel for the respondents said

in this regard that the present application was distinguishable in

that case willingness was asked for absorption

which was not done in RITES. The exercise of the option constituted merely

an offer to be considered for absorption. In these

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

Very truly yours  
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  
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 they 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  
it is to be noted that 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.

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, 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

14. The Court will direct the railway authorities to take such steps as may be necessary

**J. Sharan (Supra), we direct that the lien of the**

**ord of execution and its consequences to the unclaimed heirs**  
**applicants in the parent department cannot be**

**allowed to stand and the order will be treated as terminated from a date prior to the**

**date of the order will be struck off and the date the railway authorities issued their approval**

**and the date of acceptance of resignation or retirement of**  
**to the acceptance of resignation or retirement of**

**the unclaimed heirs as police reg. No. 10 onwards will**  
**the applicants.**

**as regards the railroads and no liability attaches and**

**15. The applicants will be entitled to all**

**consequential benefits in so far as the**  
**liabilities of the railways are concerned in regard**

**and such persons as may be claimed unclaimed cases and**  
**to such benefits. With this direction the cases**

**are disposed of with no order as to costs.**

**16. The Court will record and the applicants will**

**be directed to file and file their cases of unclaimed**

**17. I.P. Gupta 2 Ram Pal Singh  
 Member (A) 20/11/92 and Vice-Chairman (J)**

**for the unclaimed heirs as per the order of the Court.**

**18. The Court will record and file the cases of unclaimed**

**persons as per**

**19. The Court will record and file the cases of unclaimed**

**True Copy**

**Arrested**

**Arrested**

**20. PRITAM SINGH  
 Court Officer (Supra)  
 Central Administrative Tribunal  
 Principal Branch  
 Bawali House, New Delhi  
 20/11/92**

**To send all unclaimed cases to the Court of the**