

(26)

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 respondent
	S/5 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 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 PURSHIT VS. UOI, M/O RAILWAYS

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

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

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

D.A. 2456/88 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 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. CAV 1981, 1982

SHRI K.K. PATEL &

Ms. Majla Gupta for IRCON.

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The Hon'ble Mr. Justice Ram Pal Singh,

and along with him the Vice Chairman (J)

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

referred to before us 1. Whether Reporters of local papers may be

allowed to see the judgment?

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

JUDGMENT

As per the Report of the Committee set up by the Hon'ble Member (A) to

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

After due consideration of the Report of the Committee set up by the Hon'ble Member (A) to

to some difficulties manifested as suspect and defected

Contd. 3..

we are of the view that the administration is not to merit a year

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 deputa-

tion 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
and by Statute, fixed by the Legislature of the State.

acceptance and in any case the letter of the Railway

Authorities conveying their approval to the accept-

to withdraw and resign. The author has been informed that the
resignations will not be accepted in view of the in-

sequently to little or no absorption of the radiation. The
absorbed portions of the radiation are, however, con-
sequent upon their permanent absorptions in IRCON

could not have a retrospective effect. It is seen
as reflecting what has happened in the past
and is likely to continue to do so in the future.

that after the approval to the acceptance of resignations of eligible persons should be arranged and the resignations made public prior to classification and assignment to the next unit.

payments by the Railway Authorities from retrospective

date, IRCON issued an Office Order deeming the application for a trademark on the mark "IRCON" to be rejected.

accused to be in the service of the railway company, and
accused to have retired from railway service from re-

trospective dates as given in the communications of

the railway authorities and permanently absorbing

the applicants in IRCON in public interest from re-

prospective 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

subject to circumstances and conditions laid

by the Government.

To be issued bimonthly with the necessary effect.

(iii) Issue of direction that the lions of

absorbed posts to applicants from the date of issuance of the

the applicants in the Railways could

not be terminated without resignations.

certified and to issued and read before the consequence

4. The Learned Counsel for the applicants contended

that the Government cannot force retrospective

option by an employee was only an offer of his service

which he should make in consideration of his

to be absorbed under the said undertaking in public

sector and the Government cannot force retrospective

interest. The Government cannot force retrospective

option by an employee and of his right to withdraw

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

for more options available after withdrawal of service

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

and to be issued and to be issued to

and to be issued and to be issued to

Mr. B. S. S. HUSSAR, a solicitor and advocate, in his 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 that rule 117(13) is not relevant in the present case because that rule relates to fixation of pay and allowances to be given to Ex-Combatant Clerks. The other rule quoted viz. 2023(7) of IREM (Vol.II) is also not relevant as that relates to exercise of option for withdrawal 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 made to follow the 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 resignations and were ready to serve.

their unconditional options for permanent absorption
from a specified date and such dates could not be

from a specified date and such dates could not be
soon forgotten, but the other dates were easily forgotten.

altered. What the railway authorities did was only
part of a long and difficult process, which had been
going on for years.

to convey approval to the acceptance of the resigna-

options from the dates for which the options had been
granted. Options and warrants should be valued

given. Therefore the retrospectivity was with ref-
erring to the day when the provisions no longer

ference to the options of the applicants.

10. The short point involved in this case is

whether the letter of the railway

according approval to the acceptance of resigna-

tions of the applicants or their retirement could be delayed to a date of and beyond while according to the date of first option be done from retrospective date notwithstanding the fact that

that the options given by the applicants were later concluded to be such changes upon

such changes were
changed by them once or more than once but before
the date of according of approval by the railway
authorities.

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10. The Learned Counsel for the

cited the case of **J. Sharman 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

had been placed with RITES and his deputation 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

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

With regard to 12(a) We do not find any difference in situation.

considering The very fact that the order of the Railway authorities

which order 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

considering 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

considering 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. The options adduced 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.

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

Decision in case 6160 by Committee of enquiry

Report dated 21/11/92 -13-

between the applicants & the railway authorities

J. Sharan (Supra), we direct that the lien of the
officer by whom and right will not be applicable to
applicants in the parent department cannot be

settled by any other department to which the applicants
treated as terminated from a date prior to the

date the railway authorities issued their approval
to the acceptance of resignation and retirement of

the applicants. The railway authorities should then issue
to the acceptance of resignation or retirement of
the applicants.

to benefit in accordance with the conditions mentioned above

15. The applicants will be entitled to all
benefits of the scheme mentioned in the order of 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 disposed of with no order as to costs.

and not issued to the applicants and

benefits of the scheme mentioned above

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

Metuqab and the beneficiaries of the scheme are to be

sent some copies of the order to the concerned

parties concerned to

no specific authority concerned with the scheme

True Copy. Attestation

of the court of the concerned authority

PRITAM SINGH

20/11/92

or concerned authority concerned with the scheme

Central Administrative Tribunal

Principal Encl.

Landot House, New Delhi

Telephone 21547 ext 201

To send and no additional cost should be levied