

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

(17)  
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>
	S/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

VS. UOI, M/O RAILWAYS

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

VS. UOI, M/O RAILWAYS

VS. UOI, M/O RAILWAYS

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

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

VS. UOI, M/O RAILWAYS

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

VS. UOI, M/O RAILWAYS

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

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

Attend ovacy of Justice Ram Pal Singh, Vice Chairman (J)

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

and for the Hon'ble Mr. I.P. Gupta, Member (A)

whether the following will be allowed to see the judgment?

In first two days before each party file their

objection to be referred to the Reporter or not?

Order in this regard (Signature) Yes No

Yes,

JUDGMENT

It must be noted that the reporter can only review the report

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

These questions were (unintelligible) asked including

to whom particular reference to witness or witness at enquiry

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

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 the amount and date required to incur liability.

date of absorption could be made any time before  
1800 without any loss of the original act.

acceptance and in any case the letter of the Railway  
and telephone from the railway and you can

Authorities conveying their approval to the acceptance of tenders and contracts for the

stance of the resignations of the applicants conse-

to analyze and explain the nature, size and weight of

quent upon their permanent absorptions in IRCON

“**විභාග මින් මෙම ප්‍රාග්ධන ප්‍රාග්ධන ප්‍රාග්ධන ප්‍රාග්ධන ප්‍රාග්ධන ප්‍රාග්ධන**”

could not have a retrospective effect. It is seen  
that the modified record date has taken effect as of

that after the approval to the acceptance of resignations of the members of the Board of Directors.

allow the right to sue for damages from retrospective  
actions by the Railway Authorities.

date, IRCON issued an Office Order deeming the appli-

cants to have retired from railway service from re-  
each about 1900-1901, and the last number was 1600.

prospective dates as given in the communications of

the railway authorities and permanently absorbing

616 the following details 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

## Government.

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**(ii) Declaration that the applicants be**

**absorbed and not refused and to be made compensation and are**  
**entitled to be absorbed from the**

**date of issuance of the sanction**

**and demand benefits and to nothing less than**  
**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 conten-**

**ted 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**

**to IRCON to absorb the applicants from**

..

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

It was held to be indicated that the applicants  
were entitled to be indicated.

It was held that while the above pleases 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  
terminated the employment of the applicants.

As to the right to acquire lien in IRCON, IRCON could issue the order

for absorption only after receipt of approval from  
the railway authorities to the acceptance of resigna-

tions and to settle the amounts payable as and

the term of the applications or retirements of the applicants and such

acceptance cannot be given a retrospective effect

harmful 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.

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 date of permanent

absorption. They had given in the first

absorption notice to seek absorption by IRCON

and the second absorption notice to seek absorption by

IRCON and the third absorption notice to seek absorption by

instance their clear option for absorption from a

specified date. He also said that option once ex-

ercised could not be changed and was final. In

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

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

that ~~it~~ itself that the rule is not relevant in the present

case and several cases because that rule relates to fixation of pay

rule 144 (Instructions to 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.

Then the learned Counsel for the respondents further

said that he had argued that the Railway Board had clarified that per-

petrally the permanent absorption of railway employees in IRCON would

not affect the deputation period.

and deputation continue to be effective from the date of completion

of deputation period and if the deputation period is completed before the completion of three years' deputation period unless competent auth-

orities' approval was obtained for extension of deputa-

tion period as per the existing policy. In this

in this connection they invited attention to the Ministry of

Finance's letter dated 22nd September, 1972 some

extracts of which are reproduced below :-

it is to be exercised. 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, stipu-  
lating 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 enter-  
prises. 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

above吸收情况

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 such notice to withdraw the claim  
was liable to be filed and in consequence  
that the applicants were fully aware of the fact  
that they had to leave the service if it was  
so desired and that subsequently  
that they would be absorbed on completion of depu-  
tate period by the railway board by mutual  
agreement 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-  
tion and then to make changes in 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

to board is sufficient to constitute a valid notice  
according to the acceptance of resigna-  
tion and in case of such notice  
whether the date of first option  
of the applicants or their retirement could  
be done from retrospective date notwithstanding the fact  
that such notice was given after the date of first option  
that the options given by the applicants were later

such changes were  
made by them once or more than once but before  
the date of first option.

the date of according of approval by the railway  
authorities.

Learned Counsel for the respondents

cited the case of J. Sharan 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.

11. The Learned Counsel for the respondents said

that the present application was distinguishable 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

resignations and evidence of a non-employee  
case the IRCON had decided to absorb the applicants  
and the order was issued and communicated to  
IRCON and they gave unconditional options for permanent  
employment. The order was issued on 12.12.1991 and  
provided absorption in IRCON from a retrospective date.

Order was issued on 12.12.1991 and  
and dated 12.12. We do not find any difference in situation.

Options to accept additional facilities of IRCON  
was issued. The very fact that the order of the Railway authorities

dated 12.12.1991 was issued conveying approval to the acceptance of  
options including the notice of option to accept  
resignations or retirements of the applicants showed  
a desire to clarify and resolve the question  
developed that the absorption was not automatic or else there

such a desire would be no need for approval. If there was need for

such a desire it clearly implies that the resignation or  
retirement was refused.

Order of approval it clearly implies that the resignation or  
retirement could have been refused also. Or else

regarding the according of approval was redundant. The point

which needs to be seen is as to when the applicants severed their  
connections with the railway authorities. Until the

issuance of approval of the railway authorities issued it cannot  
be presumed that the applicant

can 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  
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 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 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

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After consideration given above and in accordance with the above  
order of the court of 20th August 1992-13-

in view of the above and in accordance with the above order

**J. Sharan (Supra), we direct that the lien of the  
and all liabilities and debts shall be treated as terminated  
applicants in the parent department cannot be**

**considered as outstanding and will not be considered  
treated as terminated from a date prior to the  
date on which the applicants will be appointed to the  
date the railway authorities issued their approval**

**and the following conditions shall stand and be  
to the acceptance of resignation or retirement of  
the date on which the railways are entitled to cancel their  
the applicants.**

**is entitled to the following and no further demands will**

**15. The applicants will be entitled to all  
existing and future consequential 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 declared bankrupt and the amounts left**

**benefits as well as the amounts left**

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

**and whose only has been given to these amounts and not**

**any amounts claimed for amounts paid by the court**

**and the amounts**

**no amount to be paid to the amounts on the**

**True Copy. Attested**

**on 20/11/92 at 10:00 A.M. to be true by P.R. Singh**

**Prasad Singh**

**Court Officer**

**Central Administrative Tribunal**

**Principal Secy.**

**Hazrat Nizamuddin New Delhi**

**and the amounts**

**and the amounts**

**to the amounts left**

**and the amounts left**

**and the amounts left**