

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(15)

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. NAHANG		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

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

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

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

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

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

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

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

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

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

25 SHRI Y. PRABHAKAR RAO .. Counsel for all the
parties before the Court of the Respondents

26 SHRI ROMESH GAUTAM .. COUNSEL FOR APPLICANTS

27 SHRI I.C. SUDHIR ..

28 SHRI P.S.N. SIKKA .. Counsel for all the
M/S. A.K. SINGLA & CO. RESPONDENTS.

29 SHRI K.K. PATEL & ..

30 Ms. Majula Gupta .. To represent
for IRCON.

31 CORAM ..

32 The Hon'ble Mr. Justice Ram Pal Singh,
Chairman of the Bench, presiding over the Court

Vice Chairman (J)

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

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

35 To be referred to the Reporter or not? allowed to see the judgment?

36 To be referred to the Reporter or not? Yes,

37 To be referred to the Reporter or not? No

JUDGMENT

38 A most bedeviled tag of motto and maxim evolved in 1857A

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

40 Some notorious offenders of the law of the land

Contd. 3..

41 A few others who have committed some very serious

(1)

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. 1030/887 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

P. and would therefore be of great assistance to the Court in arriving at a correct decision.

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 respondents is that absorption of the applicants is that change of option regarding

date of absorption could be made any time before

date of absorption could be made any time before

acceptance and in any case the letter of the Railway

authorities accepting the resignations of the applicants

Authorities conveying their approval to the accept-

ance of resignations and thereby confirming the accept-

ance of resignations of the applicants conse-

quently upon their permanent absorptions in IRCON

and that the said acceptance of resignations of the applicants

could not have a retrospective effect. It is seen

that the respondents have relied upon the fact that

that after the approval to the acceptance of resig-

nings of the applicants by the railway authorities will be given to the applicants

notifications by the Railway Authorities from retrospective

dates as given in the communications of the railway authorities.

On the 21st January 1997, the railway authorities, with retrospective effect from 1st January 1997, i.e., from the date of absorption, issued a circular letter to the applicants

notifying that the applicants were deemed to have retired from railway service from re-

pective dates as given in the communications of

the railway authorities and permanently absorbing

the applicants in IRCON in public interest from re-

pective 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

(H)

(ii) Declaration that the applicants be

entitled to be absorbed from the

date of issuance of the sanction

which is to be communicated with the Government.

It is further ordered that the respondents will

(iii) Issue of direction that the liens of

public sector entities to appoint and remunerate and

the applicants in the Railways could

not be valid unless and until such directions are issued

not be terminated without resignations.

Further it is ordered that the above consequences

4. The Learned Counsel for the applicants contented

that by the very nature of things the exercise of

such an option was limited to the period of one year

to be absorbed under the said undertaking in public

sector entities and the respondents failed to accept

such an option to be valid and hence failed

to be absorbed under the said undertaking in public

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to be absorbed under the said undertaking in public

sector entities and the respondents failed to accept

such an option to be valid and hence failed

to the detriment of the employees.

It is further ordered that the respondents will

5. The Learned Counsel for the respondents contended

that the respondents were not liable to such consequences

that IRCON was a Public Sector Undertaking and did

not have the power to issue such directions 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

such consequences and to issue such directions to the

specified dates. Nor can such a direction be issued

such consequences and to issue such directions to the

specified dates. Nor can such a direction be issued

file

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 Central Pay Commission and the recommendations of the Pay Commission kept on changing the date of permanent absorption by IRCON, though they had given in the first instance a date of absorption and the second date of absorption was not valid to be accepted by IRCON. The Learned Counsel for the respondents contended that the date of absorption given by the applicants was not valid and the absorption should be rejected.

(2)

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

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

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

that apart from itself that the rule is not relevant in the present

set of facts because ~~it is not relevant in the present cases because that rule relates to fixation of pay~~

rule 117(13) of IREM (Vol.I) is not relevant as that relates to ex-

ercise of option for drawal of pay on deputation.

8. The Learned Counsel for the respondents further

argued that the Railway Board had clarified that per-

manent absorption of railway employees in IRCON would

continue to be effective from the date of 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

connection they invited attention to the Ministry of

Finance's letter dated 22nd September, 1972 some

extracts of which are reproduced below :-

Ref 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 strictly 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."

FACTS OF THE CASE: The Railway Authorities had also by their letters

dated 20th August 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

arrangements with IRCON and by agreeing

with IRCON against 30 per cent of core posts or returned

to their railway departments in exchange of new

arrangements made with IRCON for deputation

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

regularisation

the excess period of deputation would be taken up

suitably with the Department of Personnel. The

order of the day, therefore, is to send a copy of

(23)

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-

tedment, engaged in absorption, the railheads for
about a 12 month 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

to hold them in the absorbed status did signify
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

altered by the railway authorities to retrospective date, such changes were
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. Sharq v/s Union of India.

and Others [O.A.No.364/86] in a similar case.

in another relating to another Public Sector Undertaking

namely Rail India Technical and Economic Services

Limited (RITES). It was observed therein that the

judicial order relating to the absorption of the petitioners

in concern 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

had been on deputation. The order must be deemed to have been continued on deputation.

case of posts with RITES till his final absorption. The Bench,

therefore, held that the lie of the petitioner

and his service on his cadre post in the parent department stood

terminated with effect from the date of the Presidential

order of his order and he was declared as entitled to all consequen-

ces of his

and substantial benefits in respect of salary and pension etc,

If any, flowing therefrom.

done to RITES in 1979. The Learned Counsel for the respondents said

nothing to the effect that the present application was distinguishable as in

that case willing not to seek for absorption

order of 1979 in RITES. The exercise of that option constituted merely

an offer to be considered for absorption. In these

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

On 20th Oct 1984 at 12:00 We do not find any difference in situation.

It is also The very fact that the order of the Railway authorities
on 19th Oct 1984 was issued conveying approval to the acceptance of
resignations or retirements of the applicants showed
it is clear 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
here is when the applicants severed their
connections with the railway authorities. Until the
issue of approval of the railway authorities issued it cannot
be presumed that the cut themselves asunder from their
office unless the option given by them by itself
according to any rule meant absorption in IRCON as such.
Likewise if such a meaning is to be assigned to their options
it needs then the communication of the approval of the railway
authorities and subsequent issue of an order by IRCON
for the absorption of the applicants to have retired from railway

service from a retrospective date were meaningless.
in fact in these cases

(26) 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
specifying that the deputation would not be

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

(c) 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

