

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

DATE OF DECISION 20.11.92.

16

<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/D 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

RE. TO RECORDED VEHICLE AT S.I.C. DELHI ON 20.2.88

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

RE. TO BANKS ISSUED A/T P.D. DELHI TOWNSHIP AT

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

RE. TO RECORDED VEHICLE AT S.I.C. DELHI ON 20.2.88

O.A. 1071/88 BALBIR SINGH MAHENDIRATTA VS. UOI, M/O RAILWAYS

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

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

(NOOT) O.A. 2460/88 K. GOVINDAN VS. UOI, M/O RAILWAYS

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

RE. TO RECORDED VEHICLE AT S.I.C. DELHI ON 20.2.88

SHRI Y. PRABHAKAR RAO ... Counsel for all the

APPLICANTS

SHRI ROMESH GAUTAM

SHRI I.C. SUDHIR

SHRI S.N. SIKKA ... Counsel for all the

RESPONDENTS

M/S. A.K. SINGLA & CO.

SHRI K.K. PATEL &

Ms. Majula Gupta for IRCON.

CORAM

RECORDED VEHICLE AT S.I.C. DELHI ON 20.2.88

The Hon'ble Mr. Justice Ram Pal Singh,

Vice Chairman (J)

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

Replies to be given to 1. Whether Reporters of local papers may be

allowed to see the judgment?

2. To be referred to the Reporter or not?

Yes,

JUDGMENT

RECORDED VEHICLE AT S.I.C. DELHI ON 20.2.88

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

RECORDED VEHICLE AT S.I.C. DELHI ON 20.2.88

Contd. 3..

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 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-  
tance of the resignations of the applicants conse-  
quently the option to be valid can only be the one im-  
plicit in the order of absorption. It is seen  
that after the approval to the acceptance of resig-  
nations by the Railway Authorities from retrospective  
dates, IRCON issued an Office Order deeming the appli-  
cants 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-  
trospective 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**

**sanctioned date itself and to continuation and to**  
**date of issuance of the sanction**

**right to terminate and be absorbed by**  
**the Government.**

**Such declaration will be maintained and**

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

**sanctioned date to remain with the applicants and**  
**the applicants in the Railways could**

**not be terminated without resignations.**

**Such right to remain will cease and will not be maintained**

**4. The Learned Counsel for the applicants conten-**  
**ded that by the very nature of things the exercise of**

**such authority and to absorption will be given**  
**option by an employee was only an offer of his service**

**which will be withdrawn whenever he so desires**

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

**sector or private sector in view of his**

**interest. The Government cannot force retrospective**

**action to吸收 the applicants and to absorb**  
**absorption. The applicants have every right to resile**

**from the offer which they had given. The Government**

**wishes to absorb the applicants as soon as possible**

**could not accept the offer from retrospective date**

**which will be to the detriment of the employees.**

**To continuation and to remain as public employees**

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

**that IRCON has established itself and**

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

**not have any right to absorb the applicants and**

**not come under the purview of the Tribunal. The absorp-**

*dated 20/10/2000*

**tion was to be made by IRCON and no direction as such**

**can be given to IRCON to absorb the applicants from**

**the date of absorption to the date (2)**

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

**which will be to the detriment of the employees and**

**and to continue and to continue to**

by the Tribunal to the effect that the applicants

are entitled for absorption by IRCON from a date

to be indicated.

and 2000 before IRCON could issue the order for absorption.

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 resign-

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 had approached the authorities for

option

Pay Commission kept on changing the date of permanent

posting and at the same time was delaying the date of

resigned notice of absorption by IRCON though they had given in the first

and the notifications had already passed out by the above

date of absorption and the date of absorption was also

made public by the concerned authorities and the ap-

pointment was to take effect from the date of absorption.

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)

(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. 203(7) of IREM (Vol.II) is also not relevant as that relates to exercise of option for drawal of pay on deputation.

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 :-

*Original letter*  
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-

and extension of deputation 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."

Administrative Ministries had submitted the following points:

9. The Railway Authorities had also by their letters with fresh reference to the date 1982 to IRCONCEN a point

dated 30th July, 1985 and 10th September, 1985 made

it clear to IRCON that they would be unable to agree to extension of deputation of railway staff. The

Administrative Ministries had also said that railway

employees should either be absorbed permanently in

IRCON on completion of three years deputation period

or repatriated to the Railways and at the same

with IRCON against 30 per cent of core posts or returned

to the Railways after serving three years

to their railway departments in exchange of new

employees who would be repatriated to

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 Railways he should be repatriated to the Railways

not willing to get himself absorbed in IRCON from

the Railways he should be repatriated to the Railways

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

handed over Learned Counsel for the respondents, therefore said parties had to agree with the Court, ~~that the applicants were fully aware of the fact that they would be absorbed on completion of deputation period of three years and they had tendered their unconditional options for permanent absorption~~

~~and the date of absorption could be fixed at any time 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 resignations and the options for permanent absorption~~

~~from the dates for which the options had been given. Therefore the retrospectivity was with respect to the options of the applicants.~~

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

according to which the options given by the applicants

of the applicants could not be withdrawn or changed

according to the date of first option given by the applicants.

that the options given by the applicants were later

changed by them once or more than once but before

such changes could be withdrawn or withdrawn.

the date of according of approval by the railway

authorities.

10. The Learned Counsel for the respondents

cited the case of J. Sharav/s Union of India

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

order relating to another Public Sector Undertaking

case namely Rail India Technical and Economic Services

Technology Limited (RITES). It was observed therein that the

order issued in order relating to the absorption of the petitioners

to which he would be operative in its own course from the date

onwards on which it was issued. It was purely an adminis-

trative order and could not operate retrospectively

and lead to the prejudice/detriment of the petitioner who

in his absence must be deemed to have been continued on deputation

case in view with RITES till his final absorption. The Bench,

therefore, held that the lien of the petitioner

and however on his cadre post in the parent department stood

and立終了した。The date of the Presidential

order and he was declared as entitled to all consequen-

cy benefits in respect of salary and pension etc,

follows infamy, flowing therefrom and his

case in view of the learned Counsel for the respondents said

that the present application was distinguishable as in

that case willingness was asked for for absorption

but in the present case in RITES. The exercise of the option constituted merely

and an offer to be considered for absorption. In these

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

unconditional non-approval it clearly implies that the resignation or

more so 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 said 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

and 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  
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  
and the applicants were given a definite date and  
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  
were no specific orders relieving the officers on  
expiry of the period of deputation. In fact, the  
organizations where they were deputed continued to  
utilize their services.

14. The law having been well-settled in the case of

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"*It is to these associations that we owe the most of our knowledge of life and*

J. Sharan (Supra), we direct that the lien of the  
parental debts will not be satisfied in favour  
of applicants in the parent department cannot be

1. **Validity period of breakdown time limit and the procedure**  
**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 to provide for additional work**  
**the applicants.**

\*15. The applicants will be entitled to all  
and available consequential benefits and the  
consequential retiral benefits in so far as the  
same are to be paid out of 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 the leading issues and to determine the effect

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

1927-1934 in Holtzschue copy of letter

25. **beehilltop** **descended** **to** **you** **year** **arrived** **date** **25/10/1988**  
**DEEPAK SINGH** **20**  
**Comt Officer** **Central Administrative Tribunal**  
**26/10/1988** **20**  
**Tando Deori, New Delhi**

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