

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/ 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 U.O.I., M/O RAILWAYS
MURTHY
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 U.O.I. M/O RAILWAYS
BHATT
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 PURSHOT 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 CHOUHARY 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

SHRI S.N. SIKKA

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

SHRI K.K. PATEL & CO. & CO. & CO.

Ms. Majula Gupta

for IRCON.

SHRI B.RAM & CO. & CO. & CO. & CO.

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

applied to withdraw the case and the Vice Chairman said
The Hon'ble Mr. I.P. Gupta, Member (A)

refused to withdraw and to withdraw and to withdraw and to withdraw

1. Whether Reporters of local papers may be

to send as their cases ~~advised~~ to see the judgment?

nothing will be done to the Reporter or not? Yes,

nothing will be done to the Reporter or not? Yes,

JUDGMENT

as most wednesday day as today and having given the case

already been done ~~delivered~~ DELIVERED BY HON'BLE SHRI I.P. GUPTA, MEMBER (A)

to some newspaper concerned as reporter will consider

Contd. 3..

nothing will be done to the Reporter or not? Yes,

22

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

(65) 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 that what is claimed by the applicants 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 accept-

ance of resignations and thereby the date of acceptance of the resignations of the applicants conse-

quent upon their permanent absorptions in IRCON

will not be allowed as they could not have any retrospective effect. It is seen

as a disadvantage, stated before, regarding the acceptance

that after the approval to the acceptance of resig-

nation or absorption, the applicants could not be absorbed

nations by the Railway Authorities from retrospective

dates of absorption. After the acceptance of the applica-

cants to have retired from railway service from re-

tropective dates as given in the communications of

the railway authorities and permanently absorbing

the applicants in IRCON in public interest from re-

tropective 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

(24)

(ii) Declaration that the applicants be entitled to additional compensation because of the absorption of their posts and to compensation and to date of issuance of the sanction entitled to compensation and to compensation by the Government.

No financial losses and to nothing more than

(iii) Issue of direction that the liens of employment on the applicants to absorb and to compensate and the applicants in the Railways could not be terminated without resignations.

which are not to be absorbed and compensation

4. The Learned Counsel for the applicants contended that by the very nature of things the exercise of

retrospective absorption and the absorption of the WOURI

option by an employee was only an offer of his service

to be absorbed under the said undertaking in public

interest and the subsequent event for being

absorbed. The Government cannot force retrospective

absorption. The applicants have every right to resile

from the offer which they had given. The Government

if it is not satisfied about what has been done, also

could not accept the offer from retrospective date

and it would be a hardship to the employees

to the detriment of the employees.

to employees who are not to be absorbed subsequently

5. The Learned Counsel for the respondents contended

that IRCON was a Public Sector Undertaking and did

not have the power to absorb the applicants and

not come under the purview of the Tribunal. The absorption

was subsequently

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

was issued by the Government

could be given to IRCON to absorb the applicants from

specification and the date to which (2)

specified dates. Nor can such a direction be issued

and the date to which the applicants are

absorbed and to be absorbed to

by the Tribunal to the effect that the applicants'

(B)

are entitled for absorption by IRCON from a date

to be indicated.

The court finding facts to the effect that

6. While the above pleas were not disputed by

(7. 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 concerned railway authorities.

Accordingly, the court held that the

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 concerned

option

Pay Commission kept on changing the date of permanent

posting and the date of absorption.

After giving notice to applicants to submit their revised

posting and absorption date, the concerned

authorities issued notice to applicants to submit revised

posting and absorption date.

After giving notice to applicants to submit revised

26

instance their clear option for absorption from a

specified date. He also said that option once ex-

excised 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

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

banking and class and held savings bank Peasant Bank
of three years deputation period unless competent auth-

rities 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 :-

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 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." (2)

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

or be posted 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

now onwards, 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

with the concerned Department of Personnel. The

(28)

3.

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 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 re-
spective to the options of the applicants.

10. The short point involved in this case is

whether the letter of the railway authorities

accorded approval to the options of the applicants
according to the date of first option

or to the date of first letter of the applicants
according to the date of first option
notwithstanding the fact that

such changes were
made by the applicants 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. Sharav/a Union of India

and Others 10.A.No.364/86 in a similar case.

(21)

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 deputed to RITES for a period of 10 months.

He had to work 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

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

(50)

cases the IRCON had decided to absorb the applicants
and it had forced willing workers of railways
and they gave unconditional options for permanent
absorption and the applicants had accepted the
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
which had been issued to the applicants and
was issued conveying approval to the acceptance of

resignations or retirements of the applicants showed

that the absorption was not automatic or else there

order released and the communication of the order
was no need for approval. If there was need for

an order no. before the approval it clearly implies that the resignation or

the retirement could have been refused also. Or else

the order sent to the applicants had no relevance
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 the applicant
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

(23) 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
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

(32)

resignation and also by Government's ~~order~~ ^{order} given
which would not affect the

above but otherwise a ~~resigned~~ ^{resigned} can withdraw with
J. Sharan (Supra), we direct that the lien of the

liens of the applicants in the parent department cannot be

**terminated as it is treated as terminated from a date prior to the
date when the railway authorities issued their approval**

and until to the acceptance of resignation or retirement of

and until the applicants are withdrawn from the

**15. The applicants will be entitled to all
benefits to which they are entitled on account of the
consequential retiral benefits in so far as the**

**liabilities of the railways are concerned in regard
to the**

successors to such benefits. With this direction the cases

are disposed of with no order as to costs.

and not issued before the date of issue of the order

and not issued before the date of issue of the order

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

and not issued before the date of issue of the order

and not issued before the date of issue of the order

With thanks to

and the following cases are disposed of as per the order

*of the Court
After the*

and not issued before the date of issue of the order

*PRITAM SINGH
29/11/2018*

of cases between State Govt. of Bihar and the

Central Administration

Principal 1/1

Fazlul Haq, New Delhi

29/11/2018

To be read with balance of law issued by Court and not by