

(16)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DATE OF DECISION 20.11.92.

<u>Regn.No.</u>	<u>Name of the applicant</u>	<u>VS. Name of the respondents</u>
1) PH DA 280/88	S/Shri V.N. AHUJA	U.O.I., N.RLY
WITH OA 2459/88	V. SATYA MURTHI	U.O.I., M/O RAILWAYS
OA 1418/88	K.L. SETHI	U.O.I., M/O RAILWAYS
OA 1002/88	R.K. GARG	U.O.I., M/O RAILWAYS
OA 997/88	RESHAM SINGH	U.O.I., M/O RAILWAYS
OA 1049/88	RAMESH CHAND	U.O.I., G.M.N RAILWAYS
OA 2458/88	T.SIVARAMAKRISHNA MURTHY	U.O.I., M/O RAILWAYS
OA 987/88	RAJ KARAN SINGH	U.O.I., M/O RAILWAYS
OA 1077/88	Y.L. DOGRA	U.O.I., M/O RAILWAYS
OA 1022/88	R.K. GUPTA	U.O.I., M/O RAILWAYS
OA 1060/88	A.P. NARANG	U.O.I., G.M., N.RLY.
OA 978/89	N.N. SEETHARAM BHATT	U.O.I. M/O RAILWAYS
OA 1431/88	M.D. KHATTAR	U.O.I., M/O RAILWAYS
OA 1061/88	G.L. KAKKAR	U.O.I., M/O RAILWAYS
OA 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

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

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

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

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

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

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

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

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

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

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SHRI S.N. SIKKA .. Counsels for all the
RESPONDENTS.

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

SHRI K.K. PATEL &

Ms. Majula Gupta
for IRCON.

CORAM

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

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

1. Whether Reporters of local papers may be

allowed to see the judgment?

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

J U D G M E N T

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

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 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 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 acceptance of the resignations of the applicants consequent upon their permanent absorptions in IRCON could not have a retrospective effect. It is seen that after the approval to the acceptance of resignations by the Railway Authorities from retrospective date, IRCON issued an Office Order deeming the applicants to have retired from railway service from retrospective dates as given in the communications of the railway authorities and permanently absorbing the applicants in IRCON in public interest from retrospective 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 Government.

(20)

(ii) Declaration that the applicants be

entitled to be absorbed from the

date of issuance of the sanction

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-

ded 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

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 option Pay Commission kept on changing the date of permanent absorption by IRCON though they had given in the first

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. 2023(7) of IREM (Vol.II) is also not relevant as that relates to exercise 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 autho-

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 :-

Ans " 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."

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

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 ref-

erence 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 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

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. Sharm 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 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

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

approval it clearly implies that the resignation or

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 applicant

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 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, or 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

J. Sharan (Supra), we direct that the lien of the

applicants in the parent department cannot be

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.

15. The applicants will be entitled to all

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.

I. P. Gupta
Member (A).

20/11/92

Ram Pal Singh
Vice-Chairman (J)

True copy attested

20/11/92

Central Administrative Tribunal
Principal Bench, New Delhi