

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

(16)

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 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..



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. 1030/88] 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 accep-

ted resignations of the applicants could not have  
any adverse effect against the applicants and any claim

of the resignations of the applicants conse-

quent upon their permanent absorptions in IRCON

cannot be accepted as a valid ground for refusing

could not have a retrospective effect. It is seen  
that after the approval to the acceptance of resig-

nations by the Railway Authorities from retrospective

date, IRCON issued an Office Order deeming the appli-

cants to have retired from railway service from re-

prospective dates as given in the communications of

the railway authorities and permanently absorbing

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

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

**entitled to be absorbed from the**

**date of issuance of the sanction**

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

**Order of吸收の権利を認められることを認めた旨**

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

**the applicants in the Railways could**

**not be terminated without resignations.**

**の権利を認められることを認めた旨**

**4. The Learned Counsel for the applicants conten-**

**ded that the employer and the employee are bound**

**ded that by the very nature of things the exercise of**

**option of吸收の権利を認められることを認めた旨**

**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**

**consideration nor entitlement to absorption.**

**actions and damages cannot be claimed against the Government**

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

**cannot force retrospective consideration**

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

**consideration and it may be held 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**

**and no direction can be issued to**

by the Tribunal to the effect that the applicants

are entitled for absorption by IRCON from a date

the exact date to be indicated below which is

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

given an order for the payment of the acquired

lien in IRCON. IRCON could issue the order

for absorption only after receipt of approval from

the railway authorities to the acceptance of resig-

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

Reserve Commission and to avail of the option

Pay Commission kept on changing the date of permanent

service, and do not want to give up the absorbed

liens to IRCON though they had given in the first

place to IRCON the option of terminating the

liens, including the absorbed ones, and such

liens are absorbed with the date of

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instance their clear option for absorption from a specified date. He also said that option once exercised 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 permanent absorption of railway employees in IRCON would continue to be effective from the date of completion of three years' deputation period unless competent authorities approval was obtained for extension of deputation 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-

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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 carried to implement 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 to provide necessary instructions.

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

his services and the excess period of deputation would be taken up

as per the arrangements made with the Department of Personnel. The

Learned Counsel for the respondents, therefore said that such acts to exceed acts of badmouthing, ~~that the applicants were fully aware of the fact~~ the ~~applicants~~ ~~were fully aware of the fact~~ the ~~applicants~~ ~~were fully aware of the fact~~ ~~that they would be absorbed on completion of depu-~~ ~~tation and that they would be absorbed on completion of depu-~~ ~~tation period of three years and they had tendered~~ ~~their unconditional options for permanent absorption~~ ~~and that if any additional period was~~ ~~from a specified date and such dates could not be~~ ~~more than 12 months from the date of the letter of resig-~~ ~~nation 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.~~

Considered following steps to deal with the ~~MOORI~~ ~~date~~

10. The short point involved in this case is

whether the letter of the railway authorities

to be issued is not to be issued according to the date of first option

according to the date of first option

be done from retrospective date notwithstanding the fact that ~~MOORI~~ ~~that~~ ~~the~~ ~~options~~ ~~given~~ ~~by~~ ~~the~~ ~~applicants~~ ~~were~~ ~~later~~

such changes were made to establish the ~~MOORI~~ ~~date~~ ~~such changes were~~ ~~changed by them once or more than once but before~~

the date of according of approval by the railway

authorities.

Learned Counsel for the respondents

cited the case of J. Sharai v/s Union of India

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

and service 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

is continuing his service and whose deputation 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

stands removed and 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 consequential benefits in respect of salary and pension etc,

if any, flowing therefrom.

Now the issue of option no 11. 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 this case it is RITES. The exercise of the option constituted merely

willingness to be considered for absorption. In these

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

and para 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  
retirement was no ~~absolute~~ need even of being so done

else the retirement could have been refused also. Or else

it might be that the approval was redundant. The point

to be seen is as to when the applicants severed their

affiliations and connections with the railway authorities. Until the

absence of 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

absorbing according to any rule meant absorption in IRCON as such.

If such a meaning is to be assigned to their options

righteous with the communication of the approval of the railway

authorities and subsequent issue of an order by IRCON

not 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-  
tional right and clearly of course it could not be  
operative termination of the link with the railways in the

absence of any rule of instructions to that effect.  
and if so to be made by the competent authority.

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.

Exhibit no. 1000 shows that the option was thus withdrawn

Any such termination cannot be from a retrospective date  
based on the date of issue of the order of withdrawal  
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

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REASONABLE TIME AFTER WHICH A RESIGNATION OR RETIREMENT  
PAPER NO. 11-13-

Reasonable time after which a resignation or retirement will

**J. Sharan (Supra), we direct that the lien of the  
and all rights and powers shall vest to petitioners  
applicants in the parent department cannot be**

for the want of non-acceptance to file was to commence  
treated as terminated from a date prior to the  
date the railway authorities issued their approval

to the railway authorities for the removal of  
to the acceptance of resignation or retirement of

or from accepting the resignation or retirement of  
the applicants.

The board will also direct that the following cases will

**15. The applicants will be entitled to all  
claimed at their respective sessions of court with  
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.

and not issued sumed out to any person out

liabilities of the railways are concerned in regard

**to such benefits. Ram Pal Singh  
Member (A). 20/11/92 Vice-Chairman (J)**

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