

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A./F.A. No. 382 1986.

Shri Ganeshan Angumuthu Applicant(s)

Adv: Y.V. Shah.

Versus

Union of India, w.Rly & O.S. Respondent(s)

Shri R.P. Bhat

" R.M. Vaidya

} Both

Sr. No.	Date	Orders
1	22/10/86	For admission Notice issued to all.
2	28/11/86	N/R No RPAAD has still been received from anyone. Realty filed by the respondent. Next adjournment has been informed accordingly. - Notice issued for final hearing - RPAAD received from the petitioner - Reel are still awaited

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Original Petition No. 382 of 86
Miscellaneous Petition No. of
Shri Ganeshan Anguramthi petitioner
Versus
. Union of India, W. Rly. L.O.

This application has been submitted to the Tribunal by
Ganeshan Anguramthi under section 19 of the Administrative
Tribunal Act, 1985 and the same has been scrutinised with reference
to the points mentioned in check list in the light of the provisions
contained in the Administrative Tribunals Act, 1985 and Central Admini-
strative Tribunal (Procedure) Rules, 1985.

The application has been found in order and may be listed on
22/10/86 for admission.

OR

The application is not been found in order for the reasons indicated in
the check list. The applicant may be advised to rectify the same within
10 days - Draft letter is placed below for Signature.

The applicant has since removed the defects and the applicant may
now be listed for admission.

This is a fresh matter may be listed

on 22/10/86 for admission

D.D.
21/10/86

D.D.
21/10/86

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

APPLICANT (S) Shri Ganesham Angumuthu

RESPONDENT(S) Union of India, & Rly & Ors

PARTICULARS TO BE EXAMINED ENDORSEMENT AS TO
RESULT OF EXAMINATION

- | | | |
|---|-----------|----------|
| 1. Is the application competent? | Yes | |
| 2. (A) Is the application in the prescribed form? | Yes | |
| (B) Is the application in paper book form? | Yes | |
| (C) Have prescribed number complete sets of the application been filed? | Yes | (for or) |
| 3. Is the application in time? | Yes | |
| If not, by how many days is it beyond time? | — | |
| Has sufficient cause for not making the application in time stated? | — | |
| 4. Has the document of authorisation/ Vakalatnama been filed? | Yes | |
| 5. Is the application accompanied by B.D./I.P.O. for Rs. 50/-? Number of B.D./I.P.O. to be recorded. | DD 947738 | h |
| 6. Has the copy/copies of the owner(s) against which the application is made, been filed? | Yes | |
| 7.a) Have the copies of the documents relied upon by the applicant and mentioned in the application been filed? | Yes | |
| b) Have the documents referred to in (2) above duly attested and numbered accordingly? | Yes- | |
| c) Are the documents referred to in (a) above neatly typed in double space? | Yes. | |

- | Particulars to be examined | Endorsement as to result of examination. |
|--|--|
| 8. Has the index of documents has been filed and has the paging been done properly? | Yes |
| 9. Have the chronological details of representations made and the outcome of such representation been indicated in the application? | Yes |
| 10. Is the matter raised in the application pending before any Court of law or any other bench of Tribunal? | NO |
| 11. Are the application/duplicate copy/spare copies signed? | Yes |
| 12. Are extra copies of the annexures filed application with
a) Indentical with the original
b) Defective
c) Wanting in Annexures
No...../Pages Nos.....?
d) Distinctly typed? | Yes |
| 13. Have full size envelopes bearing full address of the respondents been filed? | — |
| 14. Are the given addressed, the registered addressed? | Yes |
| 15. Do the names of the parties stated in the copies, tally with those indicated in the application? | Yes |
| 16. Are the translations certified to be true or supported by an affidavit affirming that they are true? | — |
| 17. Are the facts of the case mentioned under item No. 6 of the application
a) Concise?
b) Under Distinct heads?
c) Numbered consecutively?
d) Typed in double space on one side of the paper? | Yes |
| 18. Have the particulars for interim order prayed for, stated with reasons? | Yes |

①

I.P.O. 368.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

O. Application No. 382 of 1986.

Ganeshan Angumuthu. Applicants.

Vs.

Union Of India,

Western Railway and others. Respondents.

I N D E X

Annexure	Particulars	Page No.
	Memo of the Application	1 to 6
'A'	Oral retrenchment order	7
'B'	A copy of the order Passed by the H'ble Tribunal.	8

Stamp No. 366
Date of filing 20/10/86.
Registration No. 382/86.
24/10/86
P.W. 29/10/86
29/10/86
For Dy. Registrar.

D. P. V. T. J.
22/6/87.

1 (2)

In The Central Administrative Tribunal At Ahmedabad.

O.A.No. 382 /1986.

Details of Application :-

(1) Particulars of the applicant :-

- (i) Name of the applicant : Ganeshan Angumuthu.
- (ii) Name of the Father/Husband :
- (iii) Designation and office : Mr. Bukhari or his
in which employed : successor in the office
- (iv) Office address : C. Permanent Way
Inspector, Western Railway,
- (v) Address for service : Dholka,
of all notices. : Dist. Ahmedabad.

2. Particulars of the respondents :-

- (i) Name and/or designation : 1. Union of India,
of the respondents. : through the General
Manager, Western
- (ii) Office address of the : Railway, Churchgate,
respondents. : Bombay-20.
- (iii) Address for service of : 2. Mr. Bukhari or his
all notices. : successor in the office,
C. Permanent Way
Inspector, Western
Railway, Dholka.

3. Particulars of the order against which application
is made. :

- (i) Order No. : Memo No. CTR/17
- (ii) Date : 17-10-1986.
- (iii) Passed by : Respondent No. 2, orally retrenched
from service effective from one
or about 21-10-1986.
- (iv) Subject in brief :

That the applicant had been recruited as casual labour w.e.f. 21-2-79, and thereafter he was proposed to be retrenched from service w.e.f. 20-5-83 on the ground of surplus and therefore the applicant alongwith others had challenged the order of retrenchment by filing writ petition under article 32 in the Supreme Court of India. As the stay order granted by the Supreme Court of India had been wilfully flouted by the Railway

2

-2-

Officers, the applicant along with others had filed contempt petition and as a result by the order of Supreme Court of India, the applicants and other had been reinstated in service with full back wages. Thereafter the applicant alongwith others had been transferred from Vatva of Baroda Division to Okha of Rajkot Division and therefore the applicant alongwith others had filed C.M.P. No. 33574 of 1983, in the Supreme Court of India, wherein the Railway Counsel had assured the H'ble Supreme Court ^{to} accommodate the applicant and others in Baroda Division. Thereafter the applicant has been absorbed under respondent No.2 w.e.f. 1-2-85 in scale Rs.200-250(R) in Bhavnagar Division. Thereafter the applicant had been sent for medical examination of category B/1 and he had been declared failed by the A.M.O./Botad. and therefore he had been orally retrenched from service by the respondent No.2 w.e.f. 10-9-1985. In spite of the Railway Board statutory direction dated 8-6-1981 para No.6 F clause IX (a & B) the applicant had not been sent for medical examination for alternative lower category of C/1 or C/2 and therefore he had filed writ petition No. 5647 of 1985 on 14-10-85 in which notice had been issued by H'ble High Court. Ultimately the applicant had to file Application No. 32 of 1985, before the H'ble Central Administrative Tribunal. As the oral action of terminating the services of the applicant was arbitrary and against the statutory provision, the applicant had been absorbed in the alternative employment of watchman under respondent No.2, ^{Not agree he} has orally proposed to retrench the applicant from service on or about 21-10-86 by saying that, "No work

3 (3)

for you, go to the Court of law, and get the wages from the Court". and therefore the applicant has been constrained to file this application for appropriate relief and for initiating contempt proceedings against the respondent No.2.

(4) Jurisdiction of the Tribunal :

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

(5) Limitation :

The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunals Act, 1985.

(6) Facts of the Case :

The facts of the case are given below :-

(a) As the applicant has challenged all the arbitrary orders passed by the Railway Officers from time to time in Supreme Court of India, High Court of Gujarat and Central Administrative Tribunal and as the applicant has been succeeded in all the proceedings, the respondent No.2 with a object to take, revenge, has again orally proposed to retrench the applicant from service by saying that, "No work for you, go to the Court of law and gets the wages from the Court". The applicant says that the respondent No.2 has behaved the applicant as his slaves and without any power/authority and jurisdiction becomes a Railway monarch and has proposed to remove the applicant from service at any how. The impugned action of respondent No.2 is violative to articles 14 and 16 of the Constitution of India. The applicant says that impugned action of the respondent No.2 is wilfully flouting the order of the H'ble

Courts and/or H'ble Tribunal and therefore he is guilty of the contempt of Courts Act, and Tribunal and deserves to be punished. The applicant says that A.E.N./Botad or respondent No.2 have violated almost all the provisions of the Labour Laws and have pocketed the orders passed by the Supreme Court of India and H'ble Tribunal. A.E.N./Botad and respondent No.2 have no regard for the orders passed by the H'ble Court and behaved like a Railway emperor. As the AEN/Botad and respondent No.2 have not to spend amount from their own pocket, and as they have not been punished for arbitrary orders, they are habituated to flout the orders of the Court and by unfair labour practice they are victimising the labourers.

(b) In spite of the decision of the Supreme Court of India and In spite of the Railway Board scheme, the respondents have yet not prepared, maintained and notified the Divisionwise seniority list and have flouted the direction of the Railway Board and decision of the Supreme Court of India and therefore deserves to be punished under section 17 of the Administrative Tribunals Act, 1985 and under the provisions of the contempt of Courts Act 1971 and respondent No. 1 is further required to be commanded by the order of this H'ble Tribunal to initiate DAR proceedings against AEN/Botad and respondent No.2 for passing such arbitrary orders.

(c) On each transfer, from one division to another the applicant has been treated as junior and temporary status, has been granted to the applicant only w.e.f. 1-1-85 instead of 1-1-81 as per the decision of the Supreme Court of India and Railway Board scheme and therefore also the respondent No.² deserves to be punished by the respondent No.1².

(d) That the applicant has prima facie strong case and balance of convenience is also in favour of the applicant. If stay as prayed for is not granted, the applicant will agains suffer irreparable hardships & will thrown out to starvation.

(e) Oral order of retrenchment has been passed by the respondent No.2 after the order of AEN/Botad at 17-10-86 which is annexed hereto & marked as annexure 'A'. The impugned order is a non-speaking order.

Annexure 'A'

(f) A copy of order passed by the H'ble Tribunal is annexed hereto & marked as annexure 'B'.

Annexure 'B'

(7) Relief(s) Sought :

In view of the facts mentioned in para 6 above, the applicant prays for the follwing relief(s) :

(A) Be pleased to quash and set aside the impugned oral orders of retrenching the applicant from service, being punitive, arbitrary, malafide and flouting the Judgement of the Supreme Court of India as reported in 1985(2) S.C.C. page 648 and order passed by this H'ble Tribunal at annexure 'B'.

(B) Be pleased to summon the respondent No.2 to appear in person before thís H'ble Tribunal to show cause for initiating contempt proceedings against him for wilfully flouting the Supreme Court of Judgment and order at annexure 'B'.

(8) Interim order, if prayed for :

Pending hearing and final disposal of this application, be pleased to grant mandatory orders against the respondents, their officers, servants, agents and subordinates from retrenching the applicant from service in any manner whatsoever and to maintain status quo ante impugned retrenchment order.

9. Details of the remedies exhausted :

The applicant declare that, they have availed of all the remedies available to him under the relevant service rules. No remedies are available and order has been passed in a military fashion.

10. Matter not pending with any other court, etc. :

The applicant further declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

11. Particulars of ~~B~~ Indian Postal Order :-

i. Number of Indian postal order :

947738

ii. Name of the issuing Post Office :

Gujarat High Court.

iii. Date of issue of Postal Order :

10-10-86

iv. Post Office at which payable :

Ahmedabad.

12. Details of Index : attached hereto.

13. List of enclosures :

(A) A copy of the impugned retrenchment orders, at Annexure 'A'.

(B) A copy of the order passed by the Hon'ble Tribunal, at Annexure 'B'.

(C) Indian Postal Order.

VERIFICATION

I Ganeshan Angumuthu, do hereby verify that the contents from 1 to 13 are true to my personal knowledge and belief and that I have not suppressed any material facts.

Ahmedabad.

Dt. 17-10-1986.

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LTM of
Ganeshan A.

Signature of the applicant.

8 (6)

Annexure 'B'

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

Application No. 32 of 1985.

Ganeshan Angumuthu.

... Applicant

Vs.

Union of India,
through the General Manager,
Western Railway,
Churchgate,
Bombay-20. & others.

.... Respondents.

Coram : Hon'ble B.C.Gadgil, Vice-Chairman

Dt. 31-3-1986.

Tribunal's order :-

Mr. Vin for the respondents makes a statement on instructions from the Railway Officer present (Mr. R.G.Bhatt) that the applicant has been absorbed in the alternative employment as a Casual Labour namely Chowkidar and that he is actually working on that post. Mr. Shah for the applicant submitted that applicant wants relief in the shape of payment of wages during the intervening period, i.e. from the date of termination till absorption. Mr. Vin states that the applicant may take appropriate proceedings in that respect and that such proceedings will be decided on its own merits, on the basis of the contentions of the ~~respective parties~~. In view of this, Mr. Shah withdraws application. Permission is granted Application is desposed of as withdrawn.

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

Application No. 0A/382/86

Ganeshan Angumuthu Applicant

V/s

Union of India & others. ... Respondents

REPLY OF THE RESPONDENTS.

The respondents above named file their reply to the petition of the petitioner which is as follow:-

1. That the petition is not according to law, mis-conceived and not tenable on any ground.
2. That the truth or correctness ~~at~~ any statement, averment, contention, allegation or suggestion set out in the petition is not admitted unless the truth or correctness of any one of them is expressly and specifically admitted herein.
3. That otherwise also the petition is not maintainable.
4. With reference to the contents of para 3 to 6 of the petition, the correct position is as follow:-

(a) Shri Ganeshan Angumuthu was initially engaged by Mirangam ~~Okha~~ Okha project on 21-2-79 and transferred to this sub-division from 1-2-85. He was granted temporary status by Executive Engineer (Const.) Jamnagar vide Memorandum No. WOP/JAM/E.615/11 dtd. 25-10-85 with effect from 1-1-85 without medical examination. He was sent on medical examination and was declared unfit vide Assit. Divisional Medical Officer Botad's certificate No. 93735 dated 13-9-1985. There is no job for de-categorised staff with this office at present. Even the watchman's category of Permanent Wasy Inspector is Bee-one. He has not been screened. He is not entitled for alternative appointment as he is not empanelled.

(b) In this connection the combind seniority list of project casual labour is under preparation and will be prepared as directed by the Supreme Court.

File Today
@ 10.50
6
20/11/87

(c) This is not admitted and so far the Supreme Court orders are concerned the same is implemented. Since the employee is ^{Considered} ~~concerned~~ de-categorised by the Medical Officer and as such the question of alternative job in lower medical category arises only when such casual labour is screened and empanelled for regular appointment.

Since the petitioner has not completed six years of service before decategorisation, he is not entitled to an alternative job.

The petitioner however continued in service without work and was paid accordingly as per the interim relief granted by the Hon'able Tribunal.

It is further submitted that the service of the petitioner is not as yet terminated and no such order has been issued. There is therefore no cause of action for the petition. The petitioner has failed in the requisite medical examination for the post of Gangman and it is not possible to accommodate him in lower medical category. The rules for relaxation for the lower medical category are only for such persons who are screened and empanelled. The Railway - - administration can take action to dispense with the service of the petitioners as per rules.

5. With ~~regard~~ regard to contents of para 7, it is submitted that the petitioner is not entitled to any relief because the petitioner is de-categorised and cannot be continued as Gangman being a safety category.

6. With regard to interim relief as prayed for in para 8, it is submitted that there is no case for it. The petitioner if succeeds, can be suitably compensated. There is therefore no case for interim relief.

7. Regarding the contents of para 9, it is submitted that they are not true.

8. In view of what is stated above, the Respondents pray that the petition be rejected.

for and on behalf of the
Union of India.

*R. M. Vini
Advocate for
Rly. Administration*

S. Venkataraman.
(S. Venkataraman.)

Divisional Railway Manager
Western Railway,
Bhavnagar para.

VERIFICATION.

I, the undersigned, Divisional Railway Manager, W.Rly. Bhavnagar Division Bhavnagar para, do hereby verify that the contents in para 1 to 2 are true to my knowledge and the contents in para 3 to 7 are true partly to my knowledge, partly to my information and partly to my belief and I believe the same to be true.

S. Venkataraman.
(S. Venkataraman.)

Bhavnagar

Divisional Railway Manager,
Western Railway,
Bhavnagar para.


Date: 19-1-87.

.....

CORAM : HON'BLE MR P H TRIVEDI : VICE CHAIRMAN
HON'BLE MR P M JOSHI : JUDICIAL MEMBER

23/07/1987

Heard learned advocates Mr Y V Shah and Mr R M Vin. Mr Vin has drawn our attention to the written statement dated June 19, 1987. No order of termination has been passed and therefore there is no cause of action. We observe that the petitioner has come up to the Tribunal on account of apprehension regarding retrenchment due to alleged oral orders passed and it is therefore necessary to observe that such orders if any should not be passed without a definite decision for termination coming formally and without following the procedure for retrenchment laid down in this regard. With this observation the petition is disposed of.


(P H TRIVEDI)
VICE CHAIRMAN


(P M JOSHI)
JUDICIAL MEMBER