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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

NO
Recd on
from
Service

O.A. No. 547 OF 1988.
~~Ex-Acc-Box~~

DATE OF DECISION 5.2.1993.

Chinnathambia Pakrisamy & Anrs. Petitioners

Mr. P.H. Pathak, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. R.M. Vin, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V.Krishnan, Vice Chairman.

The Hon'ble Mr. R.C.Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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Chinnathambia Pakrisamy,
Mohan Lakha,
P.W.D. Mate, Executive Committee
member, Association of Railways
and Posts, having office at
37, Pankaj Society, Paldi,
Ahmedabad. Applicants.

(Advocate: Mr. P.H. Pathak)

Versus.

1. Union of India & Ors.,
Notice to be served through the
Divisional Railway Manager,
Western Railway,
Bhavnagar Para, Bhavnagar.

2. The Chief Engineer(C)
Railway Station,
Ahmedabad.

3. The Permanent Way Inspector,
Bhinnath. Respondents.

(Advocate: Mr. R.M. Vin)

ORAL ORDER

O.A.No. 547 OF 1988

Date: 5.2.1993.

Per: Hon'ble Mr. R.C.Bhatt, Judicial Member.

Heard Mr. P.H. Pathak, learned advocate for
the applicant and Mr. R.M. Vin, learned advocate for
the respondents.

2. This application under section 19 of the
Administrative Tribunals Act, 1985, is filed by the
two applicants out of which applicant No. 2 is joined
in this application as the Executive Committee Member,
Association of Railways and Post, seeking the relief
that the declaration be made that the impugned action
on the part of the respondents No. 2 & 4 not allowing
the applicants to resume their duties as Gang Mate
and not paying the salaries to the labourers as

mentioned at Annexure A-1 for the month of June 1988 as illegal, invalid and inoperative in law and the same be quashed and set aside with a consequential relief that the respondents be directed to pay the salaries of the labourers for the month of June with 12% interest and provide the residential accomodation available to Class IV employees of the Railways to all the labourers mentioned at Annexure A-1 and to absorb the labourers mentioned at Annexure A-1 as regular Class IV employees as per their seniorities. During the pendency of the application, the applicants have amended the application by adding para 5(a) in the application and also the relief prayer inserting para 7(aa) to the effect that the declaration be given that the action of the respondents of non-payment of wages to the applicants from June onwards as illegal, invalid and inoperative in law and be pleased to direct the respondents to pay the dues with 12% interest till final disposal of the petition.

3. The Annexure A-1 shows the names of 25 persons and this application is filed on behalf of 25 persons. It is important to note at this stage that on 25th August, 1988, when this matter came up for admission, the learned advocate for the applicants had a grievance that all these 25 labourers were not paid wages for the month of June 1988 and that 23 casual labourers had been taken on duty from 29th July, 1988 while the rest namely applicant No. 12 & 22 who are

Gangmates had not been taken on duty. Thereafter, the order was passed on 4th October, 1988 regarding interim relief prayed by the applicants as under:

"The respondent to pay the admissible wages for a period of one month as a measure of interim relief if not already paid within a period of 15 days".

The learned advocate for the applicants has made a statement at the bar today that in pursuance of this interim order of the Tribunal dated 4th October, 1988 the applicants other than applicant No. 12 & 22 have been paid the salary of June 1988 but the salary from 1st July, 1988 to 28th July, 1988 is not paid.

The learned advocate for the respondents could not satisfy us with any valid ground as to why this salary was not paid. There was no valid reason on the part of these respondents not to pay that salary because applicants had reported in time in pursuance of the order of the authorities concerned at Bhavnagar but they were redirected from Bhavnagar to Ahmedabad and so on but not allowed to resume duty. Therefore, in our opinion, these applicants other than the applicant No. 12 & 22 are entitled to the salary for that period till 29th July 1988 when they were allowed to resume duty. The applicants have prayed for 12% interest. The learned advocate for the applicants does not press for interest on that amount.

4. Now so far as two remaining applicants No. 12 & 22 are concerned, it is the cause of the

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applicants as pleaded in the application that they are permanent Gang Mates and they were not allowed to resume duty as Gang Mates by the respondent No. 1 in pursuance of order Annexure A-1. The learned advocate for the applicants submit that it was the duty of Respondent No.1, Divisional Railway Manager, Western Railway, Bhavnagar to allow these two applicants to resume their duties. It is alleged in the application that the said authority, respondent No.1 was prepared to take the applicants provided the applicants were willing to work to the reverted post to the Gang Mate. The case of these two applicants is that as per the order Annexure A-1 dated 17th June, 1988 passed by the Executive Engineer (Construction)-I Western Railway the applicant No. 12 & 22 have been designated as Permanent Way Mate working under PWI(C) Ahmedabad. This order Annexure A-1 further shows that with immediate effect, the persons named in this Ann. A-1 were transferred to their originating division in the form of their seniority as shown in the combined seniority list under DRM(E) BVP for further posting. It is the case of the applicants that in pursuance of the said order, they were relieved by the PWI(C) Ahmedabad on 22nd June, 1988 and they reported to the respondent No. 1's office on 23rd June, 1988 but the respondent No. 1 vide the order Annexure A-2 dated 24th June, 1988 sent back them to Ahmedabad. According to these applicants, again they reported to

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respondent No. 3's office but again respondent No.3 shunted them back to the Divisional Office Bhavnagar by letter dated June 27, 1988 vide Annexure A-3.

It is the case of these applicants that they reported to Divisional Office, Bhavnagar but the respondent No.1 has not taken note of it and they were not given posting order. Thereafter, representations were made which have been collectively produced at Annexure A-4

It is alleged in the application that thereafter again the applicants have reported as required and requested respondent No.1 to allow them to resume the duties but these two applicants were not allowed to resume the duties by respondent No.1. It is the case of these applicants that they are working as Gang Mates and the respondent No. 1's action in not allowing them to work as Gang Mates was totally arbitrary, unconstitutional and illegal. The applicants in their amended application para 5(a) alleged that the respondents have not paid the salary.

5. The respondents have filed reply. They have denied that the respondent No.3 has not allowed the petitioners to resume their duties since 29.7.1988. It is further contended that even after the repeated efforts from the Administration side, these labourers did not resume their duties and they remained absent till 29th July, 1988 and came back for duty only on

29th July, 1988 and not earlier. At this stage it may be noted that the applicants have reported and were requesting the authorities concerned to allow them to resume their duties but the authorities were not able to decide were the applicants should resume because of their internal problems as reflected in documents Ann. A/1 to A/4. It is not possible to accept the contention of respondents therefore that these labourers did not resume their duties till 29th July, 1988 and there is no merit in the contention of the respondents that these applicants remained absent on their own accord. It is for these reasons that we allow the applicants to get the salary upto the date they were allowed to resume duties.

6. The other question which now requires to be considered is whether the respondents were bound to allow these two applicants No. 12 & 22 to resume their duties as Gang Mates. The order ~~Anne~~ A-1 specifically shows their designation as Permanent Way Mate and therefore they were entitled to be taken at the reporting station Bhavnagar Division in that capacity. The learned advocate Mr. Vin for the respondents at the time of the arguments submitted that the applicant No. 12 & 22 who are referred to as applicant No. 1 & 2 in the reply of the respondents that these applicants were Gang Mates purely on adhoc basis and have not passed any selection test

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for the post of Gang Mates. The contention of the respondents as found in para 7 of the reply is that no doubt these two applicants were Gang Mates but they were on adhoc basis and they had no right to this post. It is also contended that the work of Gang Mate, his duties and responsibilities on open line is totally different and the channel of promotion is from Gangman to Key Mate and from Key Mate to Gang Mates. It is contended by the respondents that these two applicants have not worked even for a day as Key Mate and are not conversant with the specialised and most responsible work as Gang Mate and therefore they can not be entrusted the work of maintenance of Permanent Way which itself is very important in Safety aspect also it is contended that Railway administration had asked them to resume as Gangman but they did not resume their duty. The applicants have denied this contention of the respondents in the rejoinder. They have, in rejoinder, denied that they are Gang Mates only on adhoc basis and they have also denied that they have not passed selection test of Gang Mates. They have specifically contended in the rejoinder that they have put in more than seven years as Gang Mates and the promotion as a Gang Mates was given after following the procedure and therefore they should have been allowed to resume their duties as Gang Mates.

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7. The learned advocate for the applicants submitted that the order Annexure A-1 also very

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specific with regard to the designation of each labourer. He submitted that all the casual labourers in Annexure A-1 except applicant No.12 & 22 have been shown as Gangman while these two applicants No. 12 & 22 have been shown as Permanent Way Mate. He submitted that therefore there is difference in designation in Gangman and Permanent Way Mate. He submitted that the respondents have arbitrarily and illegally not allowed these two applicants to resume their duties as Gang Mates. The reply to this submission by the learned advocate Mr. R.M. Vin for the respondent was that the respondents have documentary evidence to show about the appointment of these two applicants and therefore we allowed the respondents to produce the documentary evidence about the regular appointment of these two applicants. The time was taken by the learned advocate for the respondents to produce these documents and the learned advocate for the respondents took time to produce the final order of the Headquarters dated 8th June, 1988 referred to in para 2 of Annexure A-3 but till today they did not produce it though the matter was adjourned on that ground twice after it was part heard. Hence we had rejected the oral submission of the learned advocate for the respondents today to give further time, in view of the fact that this matter was adjourned from time to time as part heard. We did not want to give further adjournment as more than

sufficient time was given to respondents to produce the documents regarding regular appointment of these two applicants. The respondents ought to have filed these order along with reply when they took the contention in para 7 of the reply that these two applicants were Gang Mates purely on adhoc basis.

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They could ~~not~~ have ~~also~~ produced this relevant order even after the applicants filed rejoinder specifically controverting the contention of the respondents but *ne ne ne filed* they did not produce it ~~right~~ and ~~they~~ have even to *L* produced the same till today from 1988 onwards. We, therefore, draw the adverse inference against the respondents. The party in possession of the documents necessary for the adjudication of the issue should produce the same if the documents are in possession or in their power irrespective of the direction of the Court. In the instant case, the time was given to the respondents to produce the same at their request and still no reason is assigned as to why they have not produced the same. We, therefore, as observed above, draw adverse inference against them that *ne* these documents, namely order of appointment of the applicant No. 1 & 2 if had been produced, the same would have gone against the respondents. We, under these circumstances do not accept the contention of the respondents that they had appointed these two applicants as Gang Mates only on adhoc basis and we do not accept their contention that they have no right

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to the post of Gang Mates as contended by the respondents, but we hold that these two applicants were Permanent Way Mates which is equivalent to the Gang Mate. The respondent No. 1 therefore was duty bound to allow these two applicants to resume their duties at Bhavnagar Division on 29th July, 1988.

8. We accept the submissions made by these two applicants relying on Annexure A-1 order dated 17th June, 1988 that they are Gang Mates, and not gangman and that they reported before respondent No.1 Bhavnagar to allow them to resume as Gang Mates in Bhavnagar Division but the respondents did not allow them to resume to that post. The result is that the respondent No.1 shall have to be directed to allow ^{the} ~~these~~ two applicants to resume their duties as Gangmates in Bhavnagar Division and these two applicants also would be entitled to the backwages from 22nd June, 1988 when they were relieved by PWI(C) Ahmedabad and these two applicants along with others had reported for duty in pursuance of the said order. Therefore, these two applicants would be entitled to the backwages from 22nd June, 1988 till they are allowed to resume the duties as Gangmates by respondent No.1 in Bhavnagar Division less the amount which they might have earned gainfully during this period.

9. Before we part with this judgment, we would like to deal with the contention of the respondents

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raised in para 7 of the reply that the applicants No. 12 & 22 can not be entrusted with the work of maintenance of Permanent Way which itself is important in safety aspect also. The respondents may give such training to the applicants for this work as required. Learned advocate for the applicants submitted that respondents have some time after, allowing applicants (except No. 12 & 22) to resume duties again did not ~~them~~ continue to resume and hence direction be given to them to allow the applicants to continue and to pay wages to them. This is development after this application was filed. Therefore, we cannot direct respondents as submitted by the learned advocate for the applicants but the applicants are at liberty to file representation about their grievances to the concerned authorities on that point. No other point is raised by ~~the~~ either of the learned advocates in this matter. Hence we pass the following order.

10.

O R D E R

(i) The respondents are directed to pay to the applicants shown at Annexure A-1 other than applicant No. 12 & 22 the salary from 1st July, 1988 to 28th July, 1988.

(ii) The respondent No. 1 is directed to allow the applicant No. 12 & 22 to resume duties as Gangmate in Bhavnagar Division within 15 days from the receipt of the copy of this order. The applicant No. 12 & 22 should report to the concerned authority i.e.

respondent No.1 within 10 days from the receipt of the copy of the order of this Tribunal.

(iii) The respondents are also directed to pay the backwages to the applicant No. 22 from 22nd June 1988 till the date when he is allowed to resume duties as Gangmate in Bhavnagar Division within three months from the receipt of the copy of this order.

(iv) The learned advocate for the applicant submitted that the applicant No. 12 was sick before 14th July 1988 and he reported ~~to~~ ^{for} the duty before respondent No.1 on 14th July, 1988 in pursuance of the order Annexure A-1. In this view of the matter, he would be entitled to backwages from 14th July, 1988 only. Hence the respondents are directed to pay the backwages to the applicant No.12 from 14th July, 1988 till he is allowed to resume duty as Gangmate in Bhavnagar Division within three months from the date of the receipt of this order less the amount which he

has earned gainfully during this period. *

(v) The application is disposed of. No order as to costs.

* That after all the gangmans were taken on duty after 28th July 1988, there is a short period of non payment of salary i.e. from 8-9-88 to 25-12-88. That for the said period, the applicants will make a representation to respondent No.1 and the same should be decided by him within two months in accordance with law.

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(R.C.Bhatt)
Member (J)

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(N.V.Krishnan)
Vice Chairman

This is a copy of the
order in M.A.C.2493

vtc.

*For D.J. Bhatt
D.J. Bhatt*