

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.437/2000.

Monday, this the 19th day of March, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

C.K.Balakrishnan,
Binder (Adhoc),
Office of the Deputy Chief Engineer
(Construction),
Southern Railway,
Ernakulam.

Applicant

(By Advocate Shri T.C.Govindaswamy)

Vs.

1. Union of India represented by
the General Manager,
Southern Railway,
Madras.

2. The Chief Engineer
(Construction),
Southern Railway,
Egmore, Madras-8.

3. The Chief Personnel Officer,
Southern Railway,
Madras-3.

4. The Deputy Chief Engineer,
(Construction),
Southern Railway,
Ernakulam Junction,
Ernakulam.

5. The Divisional Railway Manager,
Southern Railway,
Mysore.

6. The Chief Administrative Officer,
(Construction),
Southern Railway,
Egmore, Madras -8.

Respondents

(By Advocate Smt. Sumathi Dandapani)

The application having been heard on 19.3.2001, the Tribunal
on the same day delivered the following:

.2.

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant who is presently working as Binder (Ad-hoc) in the office of the Deputy Chief Engineer (Construction), Southern Railway, Ernakulam has filed this application impugning the order dated 10.4.2000 by which alongwith others he has been repatriated to the office of PWI, Hassan as Gangman, where he holds a lien.

2. The material allegation in the application can be summarised as follows. The applicant who commenced service as a Special Storemate on daily wages under the Executive Engineer, Construction, Sakleshpur, was regularly absorbed as a Gangman w.e.f. 12.4.78 in the same Construction organisation. He was later selected and posted as a Gangmate by A2 order dated 28.7.81. He was taken over by the open line and while so by A3 order dated 16.4.82 he was transferred to Construction unit under the Deputy Chief Engineer, Construction, Ernakulam, where he was posted as a Lascar by A5 order dated 26.5.82. The applicant's posting as Lascar was against a Construction reserve vacancy and he was promoted as a Binder on ad-hoc basis w.e.f. 1.6.89. By order dated 30.7.86 of the Assistant Engineer, Hassan he was confirmed as Gangman w.e.f. 12.4.79. Thereafter A-6 order dated 9.6.99 was issued providing the applicant a lien under PWI, no order assigning seniority or granting promotion to him was issued thereafter. The provision of lien was only notional for the purpose of settlement of

retiral dues. As the applicant has been continuing in the Construction organisation, the impugned order dated 17.4.2000 has been issued repatriating the applicant as Gangman to PWI/HAS.

3. The applicant has challenged the order mainly on the ground that the applicant having been transferred to the Construction organisation, he cannot after this length of time be repatriated as a Gangman, that the repatriation has been done in an arbitrary manner because Mr. Somasekharan Thampi and one Prabhakaran who are juniors of the applicant have been retained in the construction unit.

4. The respondents in their reply statement contend that the applicant was regularly appointed as Gangman in the scale of Rs. 200-250 w.e.f. 12.4.78 in the open line, that he was posted to work under Gang No. 6 under the control of Permanent Way Inspector/Sakleshpur/Mysore Division to work as a Gangman, that while working as Gangman, on his request, he was transferred as Lascar in the scale of Rs. 196-232 to the office of the Deputy Chief Engineer (Construction), Ernakulam that while so, he was confirmed on the post of Gate man w.e.f. 12.4.79 by order dated 30.7.86 (R-1), that the applicant was promoted as a Binder on ad hoc basis and that now that there is a reduction in allocation of funds and for lack of work, the applicant is being repatriated to his parent division where he has got the lien. Regarding the retention of Mr. Thampi and Mr. Prabhakaran, it has been contended that Mr. Thampi and Mr. Prabhakaran belong to different construction units basing

Trivandrum and Palghat and therefore, the case of the applicant that a policy of pick and choose was adopted is without substance. The respondents have produced a copy of the Circular dated 26.3.76 issued by CPO, Southern Railway, detailing the method of repatriation in case of curtailment of cadre in the Construction Unit.

5. We have carefully gone through the pleadings and all the materials placed on record and also heard the learned counsel on either side. The contention of the applicant that the applicant belongs to the Construction organisation, holding a regular post there, and that therefore, his repatriation by the impugned order is unsustainable, has no force at all, because we see from the documents produced by the applicant himself primarily from A-3 that the applicant belongs to the open line and that he was transferred to Construction Unit under the Deputy Chief Engineering (Construction), Ernakulam to the post of Lascar in a scale lower than that of the scale of Gangman, which post he was holding substantially at his request. In none of the documents produced by the applicant there is any indication that the applicant has either been transferred permanently against the post of Lascar in the construction organisation or that he has been absorbed in the Construction organisation. Even in the order dated 3.5.99 (A-6) the applicant had been shown to hold a lien against the post of Gangman in the PWD I, Hassan. Under these circumstances, the claim of the applicant that he does not belong to the open line to be repatriated, but belongs to the Construction organisation has no legs to stand. The argument of the learned counsel of the applicant that the respondents

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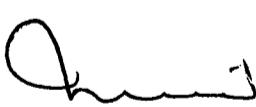
.5.

have discriminated against the applicant by repatriating him while they have retained one Mr. Somasekharan Thampi and Mr. Prabhakaran is also hollow and baseless as the respondents have in their reply statement made it clear that Somasekharan and Prabhakaran are in two other Construction Units Trivandrum and Palakkad and that nobody junior in the unit of Construction to which he belongs is retained. Therefore, we do not find any arbitrariness in repatriating the applicant.

6. In the light of what is stated above, we do not find any merit in this application and therefore, the same is dismissed leaving the parties to bear their own costs.

7. However we make it clear that the dismissal of this application would not stand in the way of the respondents from reposting the applicant to the post of Binder in the construction unit if they find that considering the experience of the applicant and the administrative requirements, it would be expedient to do so.

Dated the 19th March 2001.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

Annexure A2: True copy of the order No.P.58/81 of 28.7.81 issued by the Executive Engineer/Construction/Sakleshpur.

Annexure A3: True copy of the office order No. P3/W/381/82 of 16.4.82 issued by the Divisional Railway Manager, Southern Railway, Mysore.

Annexure A5: True copy of the office order No.26/82 of 26.5.82 issued by the Deputy Chief Engineer, Construction, Ernakulam.

Annexure A6: True copy of the order bearing No.53/99/TS of 9.6.99, issued by the 2nd respondent.

Annexure R-I: True photocopy of page 6 of Service Register of the applicant.