

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.449/03

Friday, this the 30th day of September 2005

C O R A M :

**HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER**

C.K.Velu,
Temporary Track man,
Erode Section (Removed),
Charaparambil House,
Nedumpura P.O., Cheruthuruthy,
Thalappilly Taluk, Thrissur District,
Kerala State.

...Applicant

(By Advocate Mr.D.Sreekumar)

Versus

1. Union of India represented by General Manager,
Southern Railway, Chennai – 3.
2. The Divisional Railway Manager,
Southern Railway, Palakkad Division,
Palakkad.
3. The Divisional Engineer (C),
Southern Railway, Palakkad Division,
Palakkad.
4. Assistant Divisional Engineer,
Southern Railway, Erode Section,
Erode.
5. K.P.Divakaran,
APO Southern Railway,
Palakkad Division, Palakkad.

...Respondents

(By Advocate Mr.P.Haridas [R1-4] & Mr.R.Renjith [R5])

ORDER

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant was initially engaged by the respondents as labourer as early as on 1.11.1976 and was continuously engaged for more than 1910 days covering a period of 5 years 5 months. Later he was terminated

from service on 16.2.1982 without notice and retrenchment compensation. As per the rules the applicant is entitled for temporary status and other benefits. Aggrieved the applicant filed O.P.4300/79 before the Hon'ble High Court. Pursuant to the judgment in that O.P applicant was given compensation and for other service benefits the applicant was directed to move the Labour Court. Accordingly the applicant filed C.P.(C) No.1/85 before the Labour Court, Kozhikode for the reliefs of grant of temporary status and other adequate monetary compensation under Section 33 (c) of Payment of Wages Act. That was allowed granting temporary status and other monetary benefits vide order dated 21.8.1986. As per the judgment of the Hon'ble Supreme Court the respondents had to maintain a Live Register of Casual Labourer based on length of service and to re engage them as and when their turn comes on the basis of availability of work. Instead of maintaining a common Live Register the respondents kept separate register for each department and they indiscriminately re engaged labourers overlooking the seniority. The applicant came to know that more than 600 of his juniors were re engaged and work was denied to him. As per the direction of the Hon'ble Supreme Court the respondents are duty bound to re engage the casual labourers based on their seniority in the Live Register without any representation from the employee. The applicant submitted a representation on 28.7.1999 highlighting the illegality. Finding that there was mistake in the action of the respondent they issued an order dated 1.12.1998 for re engagement of the applicant as Gang man and directing the applicant to appear for medical examination on 14.12.1998. Thereafter vide Annexure A-1 he was given an appointment. At the time of appointment the applicant was aged 44 years and pursuant to Annexure A-1 order the applicant joined as Gang man under Section Engineer/Permanent Way/Erode on 15.3.1999 but on account of strenuous

heavy work the applicant fallen ill and he was sick on 16.3.1999. It is submitted that the applicant had to undergo a major operation on spinal chord and on account of that the applicant was advised to take only light job. A true copy of the medical certificate issued by Government Doctor is produced as Annexure A-3. When the applicant made a request for light duty on the strength of medical certificate, the Section Engineer directed him to meet the Senior D.P.O., Palakkad Division. The applicant was directed to report for duty at Erode. As the applicant was unable to do heavy and strenuous work and since he has been suffering from severe back pain he continued his treatment at native place. In the meanwhile the respondents had served him a memo of charges on 24.8.1999 alleging unauthorised absence from duty for more than six months from 16.3.1999 (Annexure A-4). On 28.9.1999 the applicant reported for duty but he was directed to undergo medical examination at Railway Hospital, Palakkad. The applicant was informed that order would be issued but so far no order has been issued. Thereafter the 4th respondent appointed the Section Engineer Works Erode as Enquiry Officer. The Enquiry Officer submitted a enquiry report framing the charges (Annexure A-5). The applicant submitted a representation Annexure A-6 dated 7.3.2000 to the 4th respondent highlighting the unavoidable circumstances that forced him to be absent from duty. As there was no response the applicant submitted another representation on 12.6.2000 to the Senior D.P.O requesting for a sympathetic consideration. The respondents had rendered an order on 29.9.2000 proposing the penalty (Annexure A-7). On 1.11.2000 termination order was issued to the applicant (Annexure A-8). Applicant filed appeal against his termination (Annexure A-9), order of termination was confirmed by Appellate Authority (Annexure A-10), thereafter applicant filed revision petition against appellate order (Annexure A-11). As there

was no action on Annexure A-10 revision petition the applicant had approached this Hon'ble Tribunal by filing O.A.756/02 which was disposed of directing the 2nd respondent to consider Annexure A-10 revision petition. Vide Annexure A-13 the 2nd respondent rendered an order rejecting the revision petition. Aggrieved by the said orders the applicant has filed this application seeking the following reliefs :-

1. To call for the original records leading to the impugned orders namely Annexure A-4, Annexure A-5, Annexure A-7, Annexure A-8, Annexure A-10 and Annexure A-13 and quash the same.
2. To direct the respondents to reinstate the applicant back in service offering him a light job or duty posting in the Department.
3. To declare that on account of applicant's illness he is eligible for a light duty posting in Railway service on medical ground.
4. To direct the respondents to pay adequate monetary compensation for keeping the applicant out of duty for the period 17.3.1999 till re absorption in service.
5. To award compensatory costs from the respondents to the applicant.

2. Respondents 1-4 have filed a reply statement contending that the applicant had earlier filed O.A.756/02 which was disposed of by this Tribunal directing the respondents to consider the revision petition. The applicant did not press the O.A on merits and hence the present O.A is hit by resjudicata and liable to be dismissed in limine. The applicant who was a retrenched casual labourer was considered for absorption as Track man based on his position in the Live Register. He had joined as Track man on 15.3.1999 and worked only for one day and thereafter deserted the work spot absenting unauthorisedly up to 28.9.1999. When he reported to the Section Engineer, Permanent Way, Erode, he was directed to the medical



authorities. However he did not join duty thereafter. He was issued with a charge sheet for major penalty for unauthorised absence from 16.3.1999 onwards. An enquiry was conducted in which the applicant had participated and the Enquiry Officer found him guilty of the charges. The Disciplinary Authority after considering all aspects of the case has passed a speaking order awarding the penalty of removal from service. The Appellate Authority has considered the appeal and the penalty was confirmed. The Revision Petition submitted by the applicant was also considered by the competent authority and the penalty was confirmed. It is an established principle of law that the scope of judicial review is very limited in the matter of disciplinary proceedings unless there is clear violation of Rules/procedures. In the case of the applicant all the prescribed Rules/procedures have been followed while proceeding against him under the Discipline & Appeal Rules. There is no illegal or malafide action in removing the applicant as alleged by him. The applicant is estopped from raising the issue of seniority in the absorption at this point of time. He was considered for absorption according to his turn and he was very well aware of the nature of the work of Track man. The applicant did not report to the medical authorities as per the provisions of the Indian Railway Medical Manual and remained on unauthorised absence from 16.3.1999 onwards. There is no merits in the contentions that the applicant continued his treatment at his native place at Shoranur as his illness aggravated, since there is a Railway Health Unit at Shoranur and the applicant could have reported to the Railway Medical Authority which is mandatory for grant of leave on medical ground. Instead of reporting to the Railway Doctor the applicant remained on unauthorised absence. It is submitted that it is up to the Railway Medical Authorities to decide the fitness of the applicant for the post of Track man. Since the applicant has



concealed the facts regarding the surgery he was found fit for the post of Track man. Since he was found fit for the post of Track man, the question of alternative appointment does not arise. His plea that he was on private treatment cannot be accepted since there is a Railway Health Unit at Shoranur which is his native place. There is no light duty available in Gangs. However on recommendations on the Railway Medical Authorities light jobs are provided to the Track man only for a period of three months as a special case. Since the applicant has not followed the Railway Medical Attendance Rules, his absence from 16.3.1999 onwards can only be treated as unauthorised absence. If he was having any disorder he ought to have brought it to the notice of the medical authorities at the time of medical examination.

3. The 5th respondent has filed an affidavit denying the allegations against him and submitted that they are all made with an ulterior motive to defame the 5th respondent.

4. The applicant has filed a rejoinder reiterating his contentions in the O.A and further adding that it is physically impossible to do any hard work of a Track man as on account of his physical disability he could not continue to work as Track man. On the recommendation of his superiors he had subjected to medical examination by the Railway Hospital. He was under the bonafide impression that the respondent would issue orders posting him to light duty posts. The unauthorised absence was due to medical reasons which were beyond his control and he was virtually bedridden and continuing treatment. Hence there is no merit in harping that there is no fault on the part of the respondents in ordering re engagement of the applicant after a long period of 16 years waiting.



5. We have heard Shri.D.Sreekumar, learned counsel for the applicant and Shri.P.Haridas learned counsel for R 1-4 and Shri.R.Renjith, learned counsel for R 5. They had taken us to various pleadings, material and evidence placed on record. Learned counsel for the applicant argued that the respondents had not considered the appeal and revision petition in the proper perspective and they had dealt with the matter with a closed mind that the applicant to be removed from service. The relevant evidence of Medical Certificate issued by a Government Ortho Surgeon was not considered at all. The applicant had to fight a long battle for getting a re engagement. Had he given a re engagement at proper time along with his juniors he would have become eligible for light duty postings by the period of re engagement made in 1999. Learned counsel for the respondents, on the other hand, persuasively argued that the applicant had joined as Track man on 15.3.1999 and worked only for one day and thereafter deserted the work spot, absenting unauthorisedly up to 28.9.1999. The applicant was considered for appointment as Track man based on his position in the Live Register which he cannot dispute at this point of time. Even assuming he was sick he could have reported to the Railway Doctor as per rules but remained unauthorisedly absent which is not explained and therefore disciplinary proceeding has been initiated against him. The case of the applicant is that he was ill and his back bone and spinal disc was collapsed due to strenuous physical work. The fact that this has not been brought to the notice of the respondents, the counsel argued that it is because he was advised that he may not get employment at all. However in the best hope of taking up the job he has joined the service as Gang man but could not pursue with his work because of the illness. Therefore he was forced to be absent which was duly intimated to the respondents. The charges levelled

against the applicant/delinquent is that Shri.C.K.Velu while functioning as Temporary Track man Gang No.10/ANU SE/P.WAY/ED sec. has absented from duty unauthorisedly from 16.3.1999 onwards and continuing to be absent till date. He has thus failed to maintain devotion to duties and violated Rule 3(i)(ii) of Railway Services (conduct) Rules 1966. The case of the applicant is that he has never absented himself from duty willfully so as to attract Rule 3(i)(ii) of Railway Services (Conduct) Rules 1966. On the other hand, he has submitted medical certificates Annexure A-2, Annexure A-3 and Annexure A-6 representation etc. and also filed O.A.756/02 before this Tribunal and vide order dated 5.11.2002 this Court has directed the 2nd respondent to consider Annexure A-10 revision petition of the applicant after giving the applicant an opportunity of being heard in person and to pass appropriate orders. The applicant has submitted medical certificate from private medical practitioner wherein they have advised him not to lift heavy weight or stoop which will produce dangerous effect. It is also argued that the applicant had undergone a major spinal surgery prior to his re engagement as temporary Gang man. The respondents have produced a photo copy of the certificate, which is taken on record, from the Medical Department of the Southern Railway dated 8.10.1999 issued by the Senior Divisional Medical Officer certifying that the applicant is fit for service in "Bee Class" but there was no mention about the surgery nor examined him in that respect, therefore that certificate subsequently produced was issued without investigation of the difficulties that the applicant has undergone. In this circumstances we are of the view that the applicant has absented himself under certain compelling circumstances which at worst be an instance of human failure pardonable in the best of times by re employment and when unpardonable to be treated with break in service. We also find that there is no ulterior motive as ground of illness and

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surgery has not been disputed. We have also observed that neither the Disciplinary Authority nor the Appellate Authority had ever considered the evidence on record or illness of the applicant and evaluated the penalty of removal from service as proportionate to the act of negligence or irregularity. In any case the punishment of dismissal for unauthorised absence is too harsh which is totally disproportionate to the charges which shocked the judicial conscious of this Court. Apart from that the sole ground of awarding this punishment is based on a question in the enquiry proceedings put to the delinquent worker by the enquiry officer which is alleged to have been answered as if he has accepted the charge and is not interested in doing the duty of temporary Track man. The Tribunal should not re-appreciate the evidence in the matter of disciplinary proceedings. This has been laid down in a catena of decisions including the one reported in Tata Cellular Vs. U.O.I [(1994) 6 SCC 651]. The applicant submits that the conviction of the applicant was wholly based on alleged answer reported to have been made by him in the enquiry proceeding as if he has admitted the guilt. In other words, since the applicant denied the fact it has become incumbent on the part of this Tribunal to go through the said question and answer as if it is a case of no evidence. For better elucidation counsel for the respondents was good enough to produce the file and the said questions and answers are reproduced as under :-

Q.No.2 Do you accept the charges or not ?
Ans No. Not accepting the charges. I was ill from 16.3.1999 onwards so not attended the duty.

Q.No.7 Are you willing to work in gang ?
Ans No. I am not able to do hard work.

6. In the proceeding of the enquiry officer dated 15.11.1999 (Annexure A-5) after discussing the evidence the enquiry officer has found that the charges against Sri.C.K.Velu, Temporary Track man, Gang No.10/Anu

under S.E/P.Way/ED section are proved and he was not interested to do Gang man job and that he don't want to report for his duty as Temporary Track man. In the reasons for findings it is stated that Sri.C.K.Velu, Temporary Track man, Gang No.10/Anu of SE/P.Way/ED section joined for duty on 15.3.1999 and from 16.3.1999 onwards he was absent and not attended his job. The charged employee himself informed that due to ill health he was not in a position to perform his Gang man duty and not interested to join his duty as Gang man again. The findings of the enquiry officer, Appellate Authority and Revision Authority etc. are on the footing that the applicant has admitted the guilt but from the pleadings, evidence and material placed on record we find that the applicant has not admitted the charges. Therefore the punishment entered into on the basis of the observation is perverse and hence not sustainable. Moreover, the removal from service is not in conformity with the gravity of the offence.

7. This Court has also appointed Shri.S.Radhakrishnan, Amicus Curiae to help the Court as to whether unauthorised absence per se is liable for a punishment of removal from service and whether such action is contemplated as per rules. Learned Amicus Curiae has invited our attention to Rule 22 of the Railway Service Appeal Rules and also to the following judgments :-

- (i) AIR 1986 1173 Ramchand Vs. Union of India
- (ii) 2003 (3) SCC (L&S) 271
- (iii) 2003 (4) SCC 331
- (iv) 2003 (8) SCC 9
- (v) 1999 (2) SCC 10 &
- (vi) 2003 (3) SCC 464 and submitted that as per the railway rules there is nothing illegal to proceed against an employee who was

unauthorisedly absent willfully and without any reason. He also submitted that such harsh punishment should be awarded commensurate with the gravity of the offence and dismissal being the gravest act of misconduct the applicant should be given an opportunity to reform himself. He further submitted that the removal/dismissal being akin to that of death penalty in service law it should be adopted in rarest of rare case with solid proof of evidence. We place our encomiums/appreciation to Shri.S.Radhakrishnan who has acted as Amicus Curiae and enlightened the Court with various legal positions.

8. To sum up, we are of the view that though the applicant has absented himself from the next date he was engaged it cannot be said that he had willfully or deliberately absented from duty. From the material placed on record we find that only after a prolonged legal battle of 16 years in the Court he was offered this re engagement in the Railways, therefore, it cannot be said that he is not interested in the job. The only evidence available is that he cannot do that job because of his surgery and illness. This aspect has not been looked into/appreciated by any of the authorities in its true perspective and for that reason the impugned orders are not sustainable. Apart from that, the removal from service is a very harsh punishment imposed on the applicant without due application of mind which touches the conscious of this Court, therefore, penalty of removal from service also will not stand on its legs.

9. In the conspectus of facts and circumstances, we set aside the impugned orders Annexure A-4, Annexure A-5, Annexure A-7, Annexure A-8, Annexure A-10, Annexure A-13. We direct the respondents to give an opportunity to the applicant to appear before the Medical Board of the

Railways constituted in the Divisional level under the Divisional Medical Officer (three member doctors one of whom must be Ortho paediatrics discipline) within a time frame of two months and place the applicant to a suitable job according to the classification that they may suggest other than the Track man job. However, in any case, it is made clear that on his re engagement he will not get any monetary benefits, but benefits on notional basis, if any.

10. The O.A is allowed to the extent indicated above. In the circumstances, no order as to costs.

(Dated the 30th day of September 2005)

N.RK

N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

K.V.SACHIDANANDAN
JUDICIAL MEMBER



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