

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.458/2000

Thursday, this the 3rd day of January, 2002.

CORAM;

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

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

C.Gopinathan Nair,
Plan Recorder (Ad hoc),
Office of the Deputy Chief Engineer(Construction),
Southern Railway,
Ernakulam. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
the General Manager,
Southern Railway,
Madras-3.
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,
Southern Railway(Construction),
Egmore, Madras-3. - Respondents

By Advocate Mrs Sumathi Dandapani

The application having been heard on 1.10.2001 the Tribunal on
3.1.2002 delivered the following:

O R D E R

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

The applicant, working as Plan Recorder(Ad hoc), in the office of the 4th respondent, is aggrieved by A-9 order dated 10.4.2000 whereby he has been repatriated to his alleged parent unit, viz, Mysore Division in his substantive grade of Gangman.

2. The applicant who started his career as Casual Labourer in 1964 was appointed as Gangman with effect from 12.4.78 under PWI(Construction), Kabakkaputtur, as per A-1 order. On his request, he was transferred to the control of Chief Engineer(Construction), Madras and posted as Lascar in a lower scale in the office of the Executive Engineer(Construction), Ernakulam (see A-2 and A-3 orders). As per A-4 order dated 11.11.80, the applicant was absorbed as Lascar in the scale Rs.196-232 against an existing Construction Reserve vacancy of Lascar under control of the 4th respondent. In June 1989 the applicant was promoted as Store Issuer (ad hoc) and in 1991, after a suitability test, he was promoted as Plan Recorder (ad hoc) and continued to work in that capacity. While so, as per A-5 communication dated 5.3.96, the applicant and six others were directed by the second respondent to report before the Divisional Personnel Officer, Southern Railway, Mysore, purportedly for fulfilling the technical formalities in connection with provision of lien. Without taking any further action, the applicant was retained on the rolls of PWI, Mysore for a few weeks. Then, by A-6 order dated 25.4.96, the applicant was

2

directed to report to Deputy Chief Engineer, Construction, Ernakulam in pursuance of an office order dated 24.4.96. By A-7 order dated 26.4.96, the applicant was transferred back to Construction Unit, Ernakulam. It is made clear in that order that the applicant's lien/seniority was to be maintained in PWI/Mysore A Section. With effect from 26.4.96, the applicant was again promoted as Plan Recorder in the same scale that he was drawing in that post before he was sent to Mysore. By A-8 order dated 9.6.99 the applicant was conferred lien as a Gangman under the PWI, Mysore. He has placed at Sl.No.8 of the A-8 order. The note appended thereto contains a recital to the effect from the assignment of seniority and further promotion, if any, in the unit in which the applicant was provided lien would follow. But there was no follow up orders in that regard. Since there was no legal basis for assignment of lien as Gangman under PWI particularly in view of the fact that the applicant had been posted as Lascar against a permanent post forming part of the floating cadre of Lascars belonging to the Construction Organisation, the applicant claims to have made verbal representation whereupon he was told that it was only a notional exercise for the purpose of settlement of his pensionary benefits. However, what followed was the impugned order A-9 dated 10.4.2000 by which the applicant was repatriated to the socalled parent unit. The applicant seeks the following main relief:

Call for the records leading to the issue of Annexure A-9 and quash the same to the extent it relates to the applicant and direct the respondents to grant the consequential benefits thereof.

QY

3. The respondents have filed a reply statement opposing the O.A. The respondents maintain that the applicant was confirmed as Gangman in Mysore Division with effect from 14.3.96 which is his substantive grade in open line. The applicant's posting under the Construction Unit would not confer on him any substantive right to continue in that unit. Since the posts he held from time to time were only workcharged posts, there was no permanent post controlled by the Construction organisation. Therefore the applicant's claim that he was absorbed there is untenable. The applicant having been appointed as a Gangman under the PWI, Mysore A Section with effect from 12.4.78, could not claim any post against the Construction Reserve at this distance of time as it would mean unsettling issues that had already been settled long back. The applicant knew that his lien/seniority was to be maintained in PWI, Mysore A Section. The Construction Unit would remain in constant touch with the respective Division for advice regarding the relative seniority position of the employees whose lien/seniority is maintained therein. The repatriation of the applicant and several others was necessitated by reduced project requirements and budgetary constraints. The ad hoc promotions of Store Issuer and Plan Recorder given to the applicant in the Construction organisation would not confer on him any substantive right vis-a-vis his lien/seniority retained in the parent Division. Thus the question of fitting the applicant against construction reserve post would not arise in view of his confirmation as Gangman in 1996 itself. The respondents have

cited several decisions of the C.A.T., as well as the High Court and the Supreme Court to support the impugned order of repatriation.

4. We have heard Shri TC Govindaswamy, learned counsel for the applicant and Smt. Sumathi Dandapani, learned counsel representing the respondents.

5. According to Shri Govindaswamy, the impugned A-9 order is arbitrary, discriminatory and contrary to law in so far as it relates to the applicant. The applicant being a chronic heart patient and diabetic his fitness to work as Gangman was not critically assessed in 1996 when he was posted under the PWI, Mysore or at the time of provision of lien. In this connection, learned counsel invites our attention to the fact that the applicant had been absorbed as Lascar in the Construction Organisation against the Construction Reserve of Lascars forming part of the floating cadre maintained in that organisation on the basis of Government orders. Once the applicant was so absorbed, there was no question of repatriation according to counsel. His pay also was fixed periodically even in the light of the Vth Pay Commission's recommendations in scales applicable to the post in the Construction Organisation. He was never treated nor did he ever work as Gangman. He did not receive any promotion benefits which were available to his equals in the open line. Having worked against a regular post of Lascar from 1980, the respondents could not whimsically repatriate the applicant after 20 years. With regard to the creation of the floating

cadre in the Construction organisation, the learned counsel would invite our attention to A-11 letter dated 24.12.73 and A-12 letter dated 17.9.74 issued by the Railway Board in that regard. It is also pointed out by the learned counsel for the applicant that as per A-13 order dated 17.12.92 issued by the second respondent, several persons holding lien as Gangman in different Divisions of Southern Railway were promoted/absorbed against Construction Reserve Post though they were not Casual Labourers.

6. Smt. Sumathi Dandapani would rely on the applicant's service records and further contend that the applicant having been confirmed as a Gangman in PWI, Mysore in 1996 has accepted the position without demur. It is not denied that his lien is in the open line under PWI, Mysore. That being so, the impugned order A-9 is unassailable and the O.A. is liable to dismissed, according to learned counsel.

7. We have perused the records and carefully considered the pleadings and further contentions. We have also scrutinised the service records produced for our perusal. We notice that the applicant has been working under the Construction Organisation since 1964. It is curious to note that the applicant has been appointed as a Gangman/Gateman under PWI, though Construction organisation does not have a post of Gangman. From Vol.I of the Service Register pertaining to the applicant, it is evident that the applicant who was appointed as Lascar was transferred and posted under the control of Executive Engineer, Construction, Ernakulam

South and that he was actually relieved on 9.11.80. It is further seen from the service records that he reported for duty under DSK/CN/ERS on 11.11.80 (FN). The entry in page No.5 of Vol.I of the Service Records is extracted hereunder:

"Memorandum
No.P.359/CN/ERS
of 28/10/86

Consequent on the absorption as Lascar in grade Rs.196-232 the pay of the employee has been refixed as follows. He was reported for duty at ERS on 11.11.80.

<u>Date of increment</u>	<u>Proposed pay</u>
11.11.1980	196-00
1.11.1981	199-00
1.11.1982	202-00
1.11.1983	205-00
1.11.1984	208-00
1.11.1985	211-00
1.11.1986	214-00"

From the above, it is abundantly clear that the applicant was absorbed as Lascar in the Construction organisation as per proceedings dated 28.10.86. This vital entry in the Service Book is properly supported by the office order No.57/80 dated 11.11.80 (A-4). The said A-4 order in its entirety is quoted below:

"Shri C.Gopinathan Nair, Gangman/Gateman in scale Rs.200-350 under PWI/CN/MAQ(KBPR Div.) who has been relieved by XEN/CN/KBPR on 9.11.80 vide O.O.No.124/80 (Puttur/E/CN/34/Misc.) dated 9.11.80, reported for duty in this office on 11.11.80(FN) (Ref. ACE/CN/BNC O.O.No.244/XI/80 of 5.11.80).

He is absorbed as Lascar in scale Rs.196-232 as agreed to by the employee and posted under DSK/CN/ERS against an existing vacancy sanctioned for the Pro. Doubling of track between CKI-APK.

Q. He is not eligible for any transfer privileges."

8. In our considered opinion, the facts and circumstances would clearly indicate that the applicant was absorbed as Lascar in the Construction Organisation as early as in November 1986. The creation of Construction Reserve and maintenance of a floating cadre in the Construction Organisation are sufficiently substantiated by A-11 letter dated 24.12.73 and A-12 dated 17.9.74 of the Railway Board. It would appear that the Railway Board has approved and sanctioned 40% of the temporary non-gazetted posts in each grade in the Construction Department as a Construction Reserve from 1.4.73 and the creation of a floating cadre constituted out of Class-IV Construction Reserve for being deployed from project to project as need arises. It is pertinent to note that the career advancements available to his peers (i.e. Gangman) in open line under PWI were not extended to him, from time to time. Thus, we find that there is enough material to hold that the applicant having been absorbed as a Lascar against a Construction reserve post, would be entitled to be retained in the Construction Organisation as per the existing rules and instructions regarding the matter. All that the respondents could do was to transfer him from project to project, if need be. The subsequent entries in the Service Book describing the applicant as a Gangman on the basis of A-5, A-6 and A-7 communications would not at this distance of time enable the respondents to disengage the applicant from the Construction Organisation and repatriate him to the alleged parent unit, viz, Mysore. In our considered opinion, the entries in the Service Book with regard to the applicant's absorption as Gangman in Mysore Division and the provision of

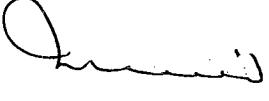
lien in Mysore would at best enable the applicant to get matters concerning his pensionary benefits settled. Therefore, we hold that the conferment of lien in the parent Division was for the purpose of pensionary benefits. It does not tantamount to supersede or cancel the earlier entry in the Service Book with regard to the applicant's absorption as Lascar against a sanctioned post. Nor can it be accepted that A-4 office order dated 11.11.80 has ever be recalled or rescinded.

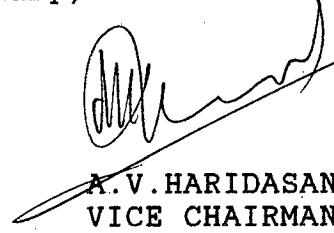
9. We do not find that the facts of the case law cited by the respondents are comparable to those obtaining in this case. We are concerned here with the special fact of absorption in the Construction Organisation. We have found that the applicant has been absorbed against the construction reserve vacancy. There is no fact or circumstance suggesting the depletion of such reserve to the extent of warranting repatriation of the applicant to his parent cadre even if, it is granted that in 1996 his lien was provided in the parent unit viz, PWI(Mysore Division). The respondents' contention in this regard therefore, cannot be accepted.

10. In view of the facts and circumstances discussed above, we hold that the impugned A-9 order in so far as it seeks to repatriate the applicant to his alleged parent unit, viz, Mysore, is liable to be set aside. Accordingly, we set

aside A-9 order to that extent. There will be no order as to costs.

Dated, the 3rd January, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the office order No.T.23/78 dt.11.4.78 issued by the Executive Engineer(Construction, Puttur, (KBPR).
2. A-2: True copy of the office order No.244/XI/1980 dt.5.11.80 issued from the office of the ChiefEngineer/Construction/Bangalore Cantonment.
3. A-3: True copy of the office order No.124/80 dt.9.11.80 issued by the Executive Engineer/Construction/KBPR.
4. A-4: True copy of the office order No.57/80 dt.11.11.80 issued by the Executive Engineer/Construction/Ernakulam.
5. A-5: True copy of the letter No.P.432/I/CN/Vol.I dt.5.3.96 issued from the 2nd respondent's office.
6. A-6: True copy of the office order No.Y/P.677/VII/MAS(A) dt.25.4.96 issued by the PWI, Southern Railway, Mysore.
7. A-7: True copy of the office order bearing No.47/96/TS dt.26.4.96 issued by the 2nd respondent.
8. A-8: True copy of the office order No.53/99/TS dt.9.6.99 issued by the 2nd respondent.
9. A-9: True copy of the office order No.42/2000/TC dt.10.4.2000 issued by the 2nd respondent.
10. A-10: True copy of the OPD List issued from the Railway Hospital, Perambur.
11. A-11: True copy of the Railway Board order No.E(NG)III-69/D/42 dt.24.12.73 issued by the Railway Board.
12. A-12: True copy of the Railway Board order No.E(NG)/I-74 CFP/40 dt.17.9.74 issued by the Railway Board.
13. A-13: True copy of the office order No.191/92/TS dt.17.12.92 issued by the 2nd respondent.
14. A-14: True copy of the letter No.P(CN) 135/I Construction reserve dt.24.3.82 issued by the Chief Engineer, Construction, Bangalore Cantonment.
15. A-15: True copy fo the treatment particulars of the applicant signed by the Railway Medical Officers from time to time.

Respondents' Annexures

16. R-I: Photocopy of certificate relating to physical fitness of the applicant issued by the Asstt. Medical Officer, Railway Health Unit, Mysore dt.19.7.77.
17. R-II: Photocopy of page 4 of Service Register of the applicant.
18. R-III: True copy of order No.P(S)676//1/5/Surplus/Vol.IV dt.26.3.76 of the 3rd respondent issued to Chief Engineer(Construction), Southern Railway, Madras and others.
19. R-IV: True copy of order of C.A.T., Madras Bench dt.23.11.98 in O.A.456/98.