

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos. 490/2000, 662/2000 & 948/2000

THURSDAY, THIS THE 31st DAY OF OCTOBER, 2002

C O R A M

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

O.A. 490/2000

R. Radhakrishnan S/o Raman Nair
Nalloor House Anari, Cheruthana, Haripad
presently working as Works Supervisor
under the Office of the Deputy Chief Engineer,
Construction, Trivandrum Central
Southern Railway.

Applicant

By Advocate Smt. Chincy Gopakumar

Vs.

1. Union of India represented by the
General Manager, Southern Railway
Madras.
2. Chief Engineer (Construction)
Southern Railway,
Madras-8
3. Deputy Chief Engineer (Construction)
Southern Railway
Trivandrum.
4. Executive Engineer (Construction)
Southern Railway
Podanur.
5. Chief Project Manager/GC
Construction Office, Southern Railway
Egmore, Madras-8.

Respondents

By Advocate Smt. Rajeswari Krishnan

O.A. No. 662/2000

1. K.P. Joseph S/o Pailo
Lorry Attender, Working under the
Department Store Keeper
Southern Railway, Ernakulam.
2. K.O. Devassy S/o Ouseph, Khalasi
Working under the
Department Store Keeper
Southern Railway, Ernakulam.
3. A.K. Lazer S/o Kunjuvareed, Khalasi
Working under the
Department Store Keeper
Southern Railway, Ernakulam.

4. P.K. Narayanan S/o Kolavan, Khalasi
, Working under the
Department Store Keeper
Southern Railway, Ernakulam.
5. K.R. Mohanan S/o Pongan, Khalasi
Working under the
Department Store Keeper
Southern Railway, Ernakulam.
6. K.T. Raju S/o K.G. Thankappan
Lascar, Working under the
Department Store Keeper
Southern Railway, Ernakulam.
7. A.P. Mary D/o Paulose,
Woman Khalasi, Working under the
Department Store Keeper
Southern Railway, Ernakulam.
8. T.V. Kalyani W/o M.R. Madhavan
Woman Khalasi Working under the
Department Store Keeper
Southern Railway, Ernakulam.

Applicants

By Advocate Smt. Chincy Gopakumar

Vs.

1. Union of India
represented by the General Manager,
Southern Raiway,
Madras
2. Chief Engineer, Construction
Southern Railway,
Madras-600 008

Respondents

By Advocate Smt. Sumathi Dandapani

O.A. No. 948/2000

K.V. Mohammed Shafi S/o Late Imbichikoya
Khalasi working under the office of the
Deputy Chief Engineer, CN, Calicut
presently staying at Mubaraque House
Farook, Chantha
Calicut District.

Applicant

By Advocate Smt. Chincy Gopakumar.

Vs.

1. Union of India represented
by the General Manger,
Southern Railway,
Madras.
2. Chief Engineer (Construction)
Southern Railway,
Madras-8
3. Deputy Chief Engineer (Construction)
Southern Railway,
Calicut.

Respondents

By Advocate Smt. Sumathi Dandapani

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issue involved in these three Original Applications is the same viz. repatriation these three OAs were heard together and are being disposed of by this common order.

O.A.No. 490/2000

2. The applicant aggrieved by A1 office order dated 10.4.2000 issued by the second respondent by which the applicant was ordered to be repatriated to his parent Division viz. Palghat Division and A2 reversion order issued by the 5th respondent dated 11.4.2000 filed this Original Application seeking the following reliefs:

(i) set aside or quash not only Annexure A1 to the extent to which the name of the applicant is included therein as a person liable to be repatriated to open line wing, but also Annexure A2 by which the pay and allowances of the applicant are reduced arbitrarily ignoring Annexures A7 and A8.

(ii) Direct the respondents to see that the applicant is retained in the same post and grade in which he was continuing as is seen from Annexure A7 and A8 and he be paid salary and allowances as specified in Annexure A7.

(iii) such other appropriate orders which are fit and necessary in the circumstances of the case.

3. According to the averment of the applicant in the O.A. he had been recruited as a Gangman(CN) on 16.5.70 and confirmed w.e.f. 16.4.71 under the 4th respondent and while so he was granted promotion on adhoc basis w.e.f. 15.12.82 as per A3 office order dated 15.12.82. He claimed that the said promotion was given to him because his suitability had been determined as per the prescribed Trade Test of the post of Works Mistry and declared to have passed the same as stated in A4 memorandum dated 7.7.81. He submitted that while so, the respondents attempted to repatriate the



applicant and certain others to Open Line and they challenged the same before this Tribunal in different Original Applications which were disposed of by this Tribunal by its A5 order dated 25.8.93. The applicant claimed that he was allowed to continue in the Construction Wing and enjoy the advantages which he was enjoying. While so, basing on the orders of the 2nd respondent the 3rd respondent issued a A-6 note dated 12.11.96 regarding revision of the Designation and act accordingly thereafter. Thereafter on account of the implementation of Vth Pay Commission Report his pay in the Works Supervisor's grade was fixed w.e.f. 1.1.96 by A7 memorandum dated 21.7.99. Basing on A7 applicant was paid his pay for the month of April, 2000 Annexure A8 being the copy of the pay slip issued by the 3rd respondent. Thereafter A1 and A2 were issued ignoring the directions of this Tribunal in A5. Assailing the same as illegal, unsustainable both in law and on facts and violative of the principles of natural justice applicant filed this O.A. According to him A1 to the extent to which the name of the applicant appeared therein overlooking A3, A4, A5 and A6 was illegal and liable to be reviewed. He claimed that he had received only one adhoc promotion i.e from the grade of Gangman to Mate, Works Mistry/Works Supervisor etc. were nothing but the revisions in Designations. The benefits given as per A7 basing on the Vth Pay Commission Recommendations and Orders thereon; could not be taken away by the 5th respondent. He claimed that any repatriation order in the case of the applicant could not be held good when Annexure A5 permitted only a modality and not a discretion.

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4. Respondents filed reply statement resisting the claim of the applicant. They submitted that the applicant was regularly appointed as Gangman in scale Rs. 200-250 under Section engineer, Permanent Way, Bommidi of Palghat Division. He joined Construction Unit on 16.6.70. Meanwhile based on his seniority in the Open line he was further promoted regularly as Sr. Gangman-II in the scale Rs. 800-1150/2650-4000 w.e.f. 1.8.82 and as a Sr. Gangman Grade-I/Trolley Man in scale Rs. 825-1200/2750-4400 w.e.f. 1.3.93 on par with his immediate senior and junior S/Sri C. Ramalingam and C. Mani. The applicant thus got promoted in his parent cadre based on his seniority in his parent unit. In the Construction Organisation he was temporarily promoted to officiate as Works Mate in scale Rs. 260-400/950-1500 purely on adhoc measure w.e.f. 1.7.81 He was promoted again as Works Mistry in scale Rs. 380-560/1320-2040 w.e.f. 1.7.82 purely on adhoc basis. Consequent on the revision of pay scale of Works Mistry the applicant was placed in scale Rs. 1400-2300 from the scale of Rs. 1320-2040 w.e.f. 1.7.82. In other words while the substantive grade of the applicant was Rs. 2750-4400 in Open Line, in construction organisation he was working in the scale of Rs. 4500-7000. They submitted that the applicant was thus enjoying promotion in the Construction organisation in a grade to which he was not eligible as per the avenue of promotion pertaining to the applicant and his seniority. According to them the rules had room for adhoc promotion in Construction Organization only to one higher grade. The avenue of promotion in the substantive grade of the applicant is as follows:

Gangman	Rs. 775-1025/2610-3540
Gangman	Rs. 800-1150/2650-4000
Keyman	Rs. 825-1200/2750-4000
	(suitability test)
Gangmate	Rs. 950-1500/3050-4590



Supervisor/ (By selection)
P.Way 1400-2300/4500-7000
(By Selection)

They submitted that to reach the present grade of Rs.1400-2300/4500-7000 in the normal avenue the applicant had to pass through at least three stages which included selection based on both written test and viva voce. The applicant had been allowed to the above unintended benefit of continuing in the higher grade in Construction Organisation without such selection and such order had not been extended to similarly placed employees. A number of Gangmen senior to the applicant were still working in scale Rs. 2750-4400 in Open line as Sr. Gangman under Section Engineer/P.Way/ Bommidi, Palghat Division. They submitted that the discrimination by chance or design could not be perpetuated for a long time. Equality demanded equal opportunity. The applicant had earlier filed O.A. 511/92 before this Tribunal challenging the order of reversion made in the Construction Organisation. The applicant and other similarly situated employees filed O.A. 381/92 and batch of similar cases before the Madras Bench of this Tribunal seeking same reliefs. Based on the directions of the Madras Bench of this Tribunal the respondents reviewed all the irregular double/multiple adhoc cases including that of the applicant. A Committee of officers at the level of Junior Administrative Grade was constituted to study the vacancy position and submit a report on all double/multiple adhoc cases. The recommendations of the Committee was placed before the General Manager, Southern Railway and the General Manager had ordered that all employees working on double/multiple adhoc to be reverted to single adhoc. Orders were issued to all those employees including the applicant. The applicant's promotion as Works Mistry was purely on adhoc measure and that it was clearly mentioned in the officer order that the



adhoc promotion would not confer on him any right for continuance seniority and regularisation etc. and that it was liable to be ended without notice. Further it was submitted that the adhoc promotion ordered to the applicant was against the Recruitment Rules and that the applicant also was not eligible for such promotion in the normal channel of promotions in his parent cadre. It was further submitted that due to financial constraints and to reduce the expenditure on projects, various measures had been taken by the Railway Administration and one such measure was to regulate all such irregular multiple/double adhoc promotions streamline and to regulate them as per the channel of promotion available to an individual so as to avoid continuous discrimination. As the promotions were purely on adhoc basis no notice was required to be granted to the applicant. They cited the judgment of the Hon'ble Supreme Court in Punjab State Electricity Board and another Vs. Baldev Singh (1998 (5) SCC 450). It was further submitted that the repatriation done had been made as per the policy laid down by the Chief Personnel Officer in his letter No. P(S)676/I/V(S) Vol.IV dated 26.3.76. The repatriation of the employees including the applicant was based on the above guidelines and after carefully considering the requirement of man power in open line and the total intake of man power to the current year. As the promotion of the applicant as Works Mistry was purely adhoc the same did not confer him any right to continue in the same grade. They also relied on the judgment of Union of India Vs. H.N. Kirtinia (1989 (3) SLJ 44 (SC) and the order of the Madras Bench of this Tribunal in O.A. NO. 465/98. According to them the OA was liable to be dismissed.



5. Applicant filed rejoinder. It was submitted that office orders for the continuance of various persons on adhoc basis in Construction Organisation were being issued by the respondents and copy of one such order was A-10 dated 16.2.2000.

6. Heard the learned counsel for the parties.

7. The learned counsel for the applicant took us through the factual aspects contained in the O.A and submitted that having continued the applicant for such a long time in the Construction wing repatriating him to Open line was not in order. According to her the appointment and promotions given to him in all these 30 years could not be treated as adhoc appointment. She referred to A-5 order of this Tribunal and submitted that the applicant could not be repatriated without affording an opportunity. The learned counsel for the respondents reiterated the points made in the reply statement. He submitted that the applicant was enjoying adhoc promotions and that applicant's case was squarely covered by the order dated 4.12.2000 of the Full Bench of this Tribunal in O.A. 103/97 and other Original Applications.

8. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

9. On the basis of the pleadings and the submissions made by the learned counsel for the parties, we find that the applicant's lien is maintained in Palghat Division which is not denied by the applicant. It has also been averred by the respondents that based on the seniority in the Open line

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under the PWI that he had been given promotions as Senior Gangman-II w.e.f. 1.8.1982, Senior Gangman Grade-I/Storeman w.e.f. 1.3.93. In the rejoinder filed by the applicant he has not denied the same. The main ground on which the applicant is assailing A1 repatriation order is A5 order of this Tribunal dated 25.8.93 in O.A.. 429/92 and other OAs. One of the Original Applications in this order is O.A. 511/92 filed by the applicant. The said A5 order reads as under:

" Contentions raised in these applications are similar and so are the reliefs sought. They are, therefore, disposed of by a common judgment.

2. For purpose of documentation, we will refer to the exhibits in OA 440/92. By Annexure-D in that application applicants in these applications were sought to be reverted.

3. Applicants are now working in the construction wing, retaining their lien in the open line divisions. By this fortuitous event, they have gained promotions in the construction wing. The question is whether they should lose the advantages they have gained in the construction wing, and also whether the advantages gained in the construction wing should be reflected in their parent divisions, in such a manner as to affect the interests of those, senior to them in the parent divisions.

4. It is submitted by both sides, that there is no risk of actual reversion for applicants for the time being. Applicants will be allowed to continue in the construction wing, enjoying the advantages which they now enjoy. In the event of the authorities proposing to enforce Annexure-D, then it will be considered whether the applicants should be reverted or retained, having regard to the vacancy position then, and after affording an opportunity to them to put forward their respective cases. They can challenge Annexure-D if it is decided to implement it.

5. With these directions, applications are disposed of. No costs."

10. Annexure-D referred to in para 4 above was the copy of the extract portion of the office order No. C-24/92 dated 12.3.92 issued by the 3rd respondent in OA 440/92. Similar orders had been issued in respect of the applicant also.

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Applicant is relying on the above order to claim that he should be given an opportunity before being reverted and repatriated.

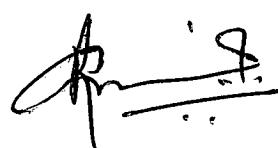
11. In O.A. No. 381/92 when similarly placed employees as the applicant herein had approached the Madras Bench of this Tribunal Madras Bench of this Tribunal held as follows:

" It would be open to the respondents to review the policy in regard to the construction wing or review the cases of the applicants and others similarly placed in particular, and to decide the principles on which such persons are to be drafted to the construction wing retained therein for a further period. Till such time as they lay down policy or take the appropriate decisions, or as along as the posts, held by the applicants, which admittedly are temporary, are not abolished, or it is considered no longer necessary to operate the promotion and posts held by the applicants or unless there are some persons other than the applicants who have a superior right over the applicants to hold the promotional posts, or until the Railway decides to revert the applicants to their parent cadres or on some other valid grounds for reversion, the applicants would have a limited right to continue in the present promotional posts on adhoc basis..."

....we make it clear however that it will be open to the Respondents to issue further orders in regard to the applicants on valid grounds, if considered appropriate and necessary, as discussed in the preceding paragraph..."

12. Hon'ble Supreme Court in Punjab State Electricity Board and Another Vs. Baldeb Singh (1998) 5 SCC 450) held as follows:

"4. Having heard the learned counsel for the parties and examining the materials on record we have no hesitation to hold that in the facts and circumstances of the case the question of giving an opportunity of hearing to the plaintiff before passing the order dated 8.1.1981 does not arise. Since the plaintiff's appointment/promotion to the post of Assistant Lineman was purely on adhoc basis and the higher authorities directed to discontinue such adhoc appointment, the competent authority passed the impugned order posting the plaintiff against his substantive post of Charge I Mate. The

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plaintiff had not acquired any right to the post of Assistant Lineman and further, the impugned order dated 8.1.1981 cannot be held to be penal in nature.

5. In that view of the matter, the question of giving an opportunity of hearing does not arise. The lower appellate court as well as the High Court committed serious error in interfering with the judgment of the trial court.

13. The Full Bench of this Tribunal in O.A. No. 103/97 and other OAs decided on 4.12.2000 considered the following issues and answered them as indicated against each:

Reference made

Answer

(a) Whether a person who is holding lien in parent cadre under a Division of the Railways and on being deputed to a Construction Organisation and there having been promoted on a higher post on adhoc basis continue to function on that post on adhoc basis, for a very long time, will be entitled to regularisation on that post in his parent cadre of the Division, and also from the date he is continuously working on that post on adhoc basis.

Railway servants hold lien in their parent cadre under a division of the Railways and on being deputed to Construction Organisation, and there having promoted on higher post on adhoc basis continue to function on that post on adhoc basis for a very long time would not be entitled to regularisation on that post in their parent division/office. They are Regularisation in their turn, in the parent division /office strictly in accordance with the rules and instructions on the subject.

(b) whether such person should be regularised in Construction division from the date of continuously working on adhoc basis, treating the post on which he is working as a regular post since the post continues to exist for about 15 years, notwithstanding the contention of the respondent that the Construction Organisation is a temporary Organisation and persons are appointed against work charged post.

This is answered in the negative.

14. We find from the above orders/judgments that while a division Bench of this Tribunal in O.A. No. 429/92 and other OAs held that a show cause notice is required to be issued to the concerned employee working in a post on a higher scale of pay than his substantive post before he is reverted and



repatriated to the division/unit in which he held his lien, another Division Bench of the Madras Bench of this Tribunal in O.A. NO. 381/92 held that the respondents could do it on valid grounds. We note that one of the valid grounds listed in the above order of the Madras Bench of this Tribunal was abolition of posts. In this case the respondents had submitted that the reason for repatriation as the reduction in the workload of the Construction Organisation. Another valid ground listed in the order of the Madras Bench of this Tribunal was the existence of a superior right over the holders of higher grade posts on adhoc basis in the Construction Organisation. According to the respondents, the applicant herein was enjoying unintended benefits. Full Bench of this Tribunal has laid down that an employee who had been working on adhoc basis in the Construction Organisation was not entitled for regularisation in that post. Hon'ble Supreme Court had held that it is not necessary to issue a show cause notice before ordering reversion of an adhoc promotee. In the light of the above legal dicta we are of the considered view that applicant's plea that the respondents' action in repatriating him was against A5 order cannot be accepted. Further we find that in A-5 order this Tribunal considering the order of reversion and repatriation and legal position obtaining at that time, based on the factual situation as existing at that time passed the said order. The order under challenge at that time is not the one under challenge now. The present position is on the basis of fresh consideration based on the report of the Committee appointed for the purpose and progress of works and funds position of 2000-2001. The legal position had also been laid down by the Full Bench and the Hon'ble Apex Court. Thus, A5 order would not help the applicant to remain in the

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Construction organisation for ever. In this view of the matter the respondents' action in repatriating the applicant by A1 order cannot be faulted.

15. Applicant has also assailed A2 order dated 11.4.2000 by which he had been reverted from the grade of Rs. 4500-7000 to grade Rs. 3050-4590. According to the applicant he had not been enjoying double adhoc promotions. On a perusal of A3 order dated 15.12.82 we find that the applicant had been "promoted" from the post of Works Mate in grade Rs. 260-400 to Works Mate in Grade Rs.380-560 /1320-2040. Moreover we find from A-4 Memorandum dated 7.7.1981 that the applicant passed the Trade Test for Works Mistry while working as a Works Mate. In the face of these two orders we are unable to accept the plea of the applicant that he had got only one adhoc promotion. The further increase in his pay scale was only as a result of revision of pay scales on account of general revision of the pay of the Works Mistry and on the basis of the Pay Commission recommendations. But we find that the applicant became a Works Mate and then a Works Mistry on adhoc basis i.e. two adhoc promotions. We also find from the respondents that the respondents organisation had pursuant to the decision of the Madras Bench of this Tribunal in O.A. No. 381/92 had appointed a Committee of Junior Administrative Grade Officers to review all cases of double/multiple adhoc promotions and on the basis of the recommendations of the Committee and on the orders of the General Manager had ordered reversion so that the employees enjoy only single adhoc promotion. As it was pursuant to the policy decision taken at the level of General Manager the reversion took place and it was not account of any order which was a punishment with any stigma attached to the applicant, we are of the considered view that the question of



giving opportunity to the applicant would not arise in this case. In the light of the above we are of the considered view that A2 does not call for any interference from this Tribunal.

16. In the result we hold that the applicant is not entitled for any of the reliefs sought for and accordingly we dismiss this Original Application with no order as to costs.

O.A.No. 662/2000

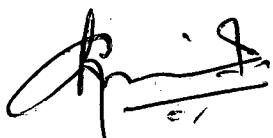
17. The applicants, eight in number, aggrieved by A1 order dated 16.5.2000 by which they among others were repatriated to Trivandrum Division in the grade of Track Man in the scale of Rs.2610-3540 with immediate effect, filed this O.A. seeking the following reliefs:

(i) set aside or quash Annexure A1 to the extent to which the same directs repatriation of the applicants to open line wing, rather than themselves being retained in construction wing as the same is illegal and void.

(ii) direct the respondents to see that the applicants are retained in construction wing in Thiruvananthapuram division itself so far as various works are being carried on in the construction wing

(iii) such other appropriate directions which are fit and necessary in the circumstances of the case

18. According to the averments of the applicants in the O.A. they were working in the Construction Wing at Ernakulam in various capacities such as Lorry Attender (1st applicant), Lascar(6th applicant), Khalasis (2nd and 5th applicants) and Women Khalasis (7th & 8th). Applicants were initially engaged on various dates in the years 1979 to 84 and they were granted temporary status on the basis of their continuous service over six months. Their services were later regularised. They claimed that all along they were continuing in the Construction wing right from their initial engagement. It was submitted



that in the case of the 6th and 7th applicants there had been an attempt to repatriate them to open line in 1993 and both had filed O.A Nos. 820/93 and 793/93 respectively before this Tribunal which were disposed of by this Tribunal by A2 and A3 orders dated 27.5.93 and 7.5.93. In the case of the applicants 2 and 3 when such contingencies arose they obtained A4 orders from the Senior Divisional Personnel Offer for their continuance in Construction wing. In the case of the 8th applicant she was covered by A5 order issued pursuant to the Award rendered in I.D No. 5/92 of the Labour Court, Ernakulam and OP NO. 3702/95 in the Hon'ble High Court of Kerala and hence she was liable to be treated on par with any other Casual Labourer initially engaged on 11.2.84 and given all benefits on putting in continuous service for 6 months in Construction work. Further it was submitted that many like the applicants in O.A. 458/2000 and similar cases pending before this Tribunal S/Shri V. R. Balakrishnan, K.K. Sreedharan, A. Shanmugham, C. Venugopalan, T. Jayarajan, M.K. Ammini, P.V. Pauly, K.S. Gokulam, N.N. Mohanan, K.P. Anirudhan, Thilakam, Narayanan Elayath etc. who had been working in open were being allowed to work in Construction wing uninterruptedly for some time past and hence there was no exigencies of service or public interest involved in ordering repatriation of applicants who had not even worked for a day in the Open line. Further since Sabarimala Angamaly construction work and so many other construction works were going ahead and there was sufficient chances for the accommodation of the applicants in Construction work they could continue to work in Construction wing without any losses to the respondents. Alleging that A1 was violative of Articles 14, 16 and 21 of the Constitution of India and was issued without application of mind and against A2 and A3 orders for 6th and 7th applicants and was issued without hearing the applicants and also alleging that many others not entitled of

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continuing in Construction wing were being continued in Construction wing they filed this O.A. seeking the above reliefs.

19. Respondents filed reply statement resisting the claim of the applicants. Giving the service particulars of the applicants in which the dates of empanelment of applicants were shown as 10.3.97, it was submitted that Construction Wing was a temporary one and it drew employees from open line or casual employees to meet seasonal requirement. When a Project was completed the employees were either directed to other works or in case of regular employees repatriated to their parent cadre in open line where their lien was maintained. It was further submitted that due to severe financial crunch and completion of some projects resulting in reduction of workload, Construction organisation had to reduce its work force. Accordingly it had been proposed to repatriate 320 staff in various categories to open line during 2000-2001 which had been approved by the General Manager. The repatriation was in the interest of the organisation as a whole. It was further submitted that in accordance with the orders issued by the Railway Board vide their letter No. 78/96 dated 3.9.96 (R1) for regularisation of approximately 56,000 Casual labourers in the year 1997-98 and the Action Plan drawn for the absorption of all casual labourers on roll to be completed by December 1997, large number of Casual Labourers were empaneled enmasse irrespective of availability of posts/vacancies. Since the decasualisation was done enmasse irrespective of vacancies of Gangmen in open line, the casual labourers of construction organisation who were empaneled as Gangmen were retained in construction organization temporarily against the work charged posts duly maintaining their lien in the respective divisions and accordingly the applicants in the O.A. were empaneled as

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Gangmen in scale Rs. 2610-3540 in Trivandrum division and were retained in Construction Unit temporarily. Applicants 2 & 3 were also retained in construction unit only on similar grounds vide A4 and the said order did not confer any right on the applicants to work permanently in the Construction organisation. As regards the 8th applicant she had been empaneled as Gangwoman in scale Rs. 2610-3540 in Trivandrum Division and was retained in Construction Organisation temporarily. The applicants in O.A. 458/00 and 437/00 pending before this Tribunal were also repatriated but were retained in construction Wing based on the interim orders dated 26.4.2000 and 25.4.2000 respectively. As regards the other employees referred to by the applicants they were all seniors to the applicants and as per R2 Chief Personnel Officer's letter dated 26.3.1976, juniors were repatriated first. Applicants were letter dated 26.3.76 juniormost among the 150 Gangmen repatriated. The repatriation had not been arbitrary and was in accordance with R-2 letter dated 26.3.76. They also relied on the orders of the Allahabad Bench of this Tribunal in O.A. NO. 1088/91 (G.R. Sethi Vs. Union of India) delivered on 18.1.93, Hon'ble Supreme Court's judgment in Punjab State Electricity Board and another Vs. Baldev Singh (1998(5)LSC 450), Union of India Vs. H.N. Kirtinia (1989 (3)SLJ 44(SC), Madras Bench of this Tribunal in O.A. NO. 456/98 (R. Thangaraj and others Vs. Union of India) and the writ Appeal No. 1606/99 and WMP NO. 2308/99 challenging the order of Madras Bench in O.A. 456/98.

20. We have heard learned counsel for the parties.

21. On careful consideration of the submissions made by the learned counsel for the parties and the rival pleadings we find that the main ground raised by the applicants in this OA is



that they had all been working in Construction Wing right from initial engagement. Two of the applicants are relying on the earlier orders of this Tribunal for the reliefs sought for. We find that A2 and A3 orders of this Tribunal in O.A. 820/93 and 793/93 were passed on 27.5.93 and 7.5.93. Those orders were issued when the two applicants were Casual Labourers. Subsequently their empanelment had been done pursuant to R1 order dated 3.9.96 issued by the Railway Board. We note that in R-1 the a policy decision, taken that all Casual Labourers should be regularised, had been conveyed. We are of the view that so long as the said policy decision is not under challenge and the applicants had allowed themselves to be empaneled in the Trivandrum Division they could no longer seek a declaration on the basis of the orders of this Tribunal in O.A. 820/93 and 793/93.

22. As regards second and third applicants, according to the respondents their retention in the Construction Wing was temporary and the same would not give any right to them to continue in the Construction Unit. On a careful consideration of A4 we are of the view that A4 does not give any right to the applicants 2 & 3 to continue in Construction wing. We find that in A4 it was only stated that they were empaneled and if they were willing to come over to Open line they could report to the office at the earliest. We do not find anything in A4 that would create any legal right to those included therein by which they could not be sent back to the unit where their liens are maintained when they were declared surplus to the requirement of Construction Wing.

23. We find from A5 letter, by which the 8th applicant had been reinstated in service, that the same also does not give any right to the said applicant to continue in the Construction wing especially when she had been empanneled pursuant to the policy decision taken by the Railway Board during 1996-97.

24. According to the respondents due to severe financial crunch and completion of some projects resulting in reduction of workload, the Construction origination had to reduce its work force and hence they had decided to repatriate 320 staff in various categories to open line during 2000-2001.

25. In the light of the detailed analysis given in the foregoing paragraphs as well as the reason of finances given by the respondents and following the conclusions arrived at by us in O.A. 490/2000 we hold that the applicants in this O.A. are not entitled for the reliefs sought for and the O.A. is liable to be dismissed. We do so accordingly leaving the parties to bear their respective costs.

O.A.No. 948/2000

26. This O.A. has been filed by the applicant against A1 office order dated 16.5.2000 issued by the second respondent by which he had been repatriated from Construction Wing to Open Line. He sought the following reliefs through this O.A.:

(a) set aside or quash Annexure A1 to the extent to which the same directs the repatriation of the applicant to open line wing, as the same is illegal and void.

(b) direct the respondents to see that the applicant is retained in Construction Wing, so far as various works are being carried on in the construction Wing.

(c) Such other appropriate directions which are fit and necessary in the circumstances of the case.



27.. According to the averments of the applicant in the O.A. he was offered appointment on compassionate ground pursuant to second respondent's A-II letter dated 13.3.96. Later he was transferred from Quilon to Calicut by A-III order dated 10.9.99. He assailed the order repatriating him to the Open line on the main ground that he had been working in construction wing all throughout his service from his recruitment and so he had a preference to continue in construction wing.

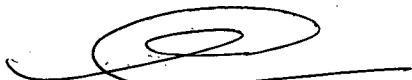
28. Respondents filed reply statement resisting the claim of the applicant on similar pleas as given in O.A. 662/2000.

29. Heard the learned counsel for the parties.

30. On a careful consideration of the submissions of the learned counsel for the parties and rival pleadings we find that this case is similar to the case of the applicants in O.A. 662/2000 which has been dismissed by us as above. Following our order in O.A. No. 662/2000 this O.A is liable to be dismissed. We do so accordingly leaving the parties to bear their respective costs.

31. In the result the three O.As No. 490/2000, 662/2000 and 948/2000 stands dismissed as above.

Dated the 31st October, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

kmn



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

APPLICANTS' ANNEXURES

O.A. No. 490/2000

A1 True copy of Office Order No. 43/2000/TS dtd. 10.4.2000 issued by the 2nd respondent.

A2 True copy of Reversion order issued by the 5th respondents per No. 63/I/CN/Review dated 11.4.2000

A3 True copy of office order dated 15.12.82 No. P.63/CN/PTJ

A4 True copy of Memorandum dated 7.7.81 of the fourth respondent No. P.63/CN/PTJ

A5 True copy of judgment dated 25.8.93 issued by this Tribunal in O.A. NO. 429/92 connected cases

A6 True copy of a note under reference NO. P.135/Cn/TVC dated. 12.11.96 issued by the 3rd respondent.

A7 True copy of Memorandum under reference No. P.524/CN/TVC dated. 21.7.99.

A8 True copy of the Pay slip for the month of April, 2000 issued by the 3rd respondent.

A9 True copy of the communication dated 25.9.96

A-10 True copy of the order Ref. No. Office Order No. C 19/00 dated 16.2.2000

RESPONDENTS ANNEXURES

R1 TRUE COPY OF THE CHART FOR THE POST OF WORKS MISTRY

R2 TRUE COPY OF THE AVENUE OF PROMOTION APPLICABLE TO THE APPLICANT.

O.A. 662/2000

Applicants' Annexures

A1 True copy of office order NO. 64/2000/TS dated 16.5.2000 issued by Sr. DPO for 2nd respondent.

A2 True copy of judgment dated 27.5.93 in OA 800/93 by this Tribunal

A3 True copy of judgment dated 7.5.93 in O.A. 793/93 by this Tribunal

A4 True copy of Order NO. Co NO. 24/97/AP issued in Proceedings NO. V/P.564/I/End/TVC/Vol.V dated 25.3.97 of Sr. Divisional Personnel Officer.

A5 True copy of letter NO. P.363/CN/ERS/Dy. Issued by Dy. Chief Engineer, Construction/Ernakulam.

Respondents' Annexures

R1 Photocopy of letter No. 78/96 dated 3.9.96 of Railway Board.

R2 Photocopy of letter NO. P(S)676/1/v/S/Vol.IV dated 26.3.76 of the Chief Personnel Officer, Southern Railway, Chennai issued to the CE (Construction) Southern Railway, Chennai and others.

O.A. 948/2000

A1 True copy of the Office Order No. 64/2000/TS dated 16.5.2000 issued by the 2nd respondent.

A-II True copy of the Communication No. P.407/1/CN/CG/Vol.IV dated 13.3.96 of the 2nd respondent.

A-III True copy of the order under Ref. No. OONO. C.71/99 dated 10.9.99 of the 2nd respondent.

A-IV True copy of the Memorandum dated 20.9.99 issued by the 2nd respondent.

A-V True copy of the order issued by the Executive Engineer (Doubling) Quilon.

A-VI True copy of the Transfer Order NO. 90/2000/TS issued by the 2nd respondent.

RESPONDENTS' ANNEXURES

R-I Photocopy of page 5 of Service Register of the applicant.

R-II Photocopy of page 7 of Service Register of the applicant.

R-III Photocopy of Railway board's letter No. 78/96 dated 3.9.96 referred to in the reply statement.

R-IV True copy of letter No. P(S)676/1/5/Surplus/Vol.IV dated 26.3.76 of the CPO, Southern Railway, Chennai addressed to the 2nd respondent and others.