

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.50/2001

Wednesday this the 4th day of December, 2002.

CORAM:

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

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

1. K.P.Sadasivan Nair,
Gopi Nivas, T.C.9/2750,
Edappazhanji,
Sasthamangalam P.O.,
C.S.M.Nagar,
Thiruvananthapuram,
presently working as Works Mate,
Under Section Engineer,
Southern Railway,
Thiruvananthapuram Central. .. Applicant
2. G.Thilakan,
Sudi Heaven,
Parayakadu P.O.
Thuravoor, Alleppey District,
presently working as Material Checker
in the office of the Deputy Chief
Engineer(CN), Southern Railway,
Ernakulam.
3. K.P.Chandran,
Kalathu House,
Enkakkadu P.O., Akamala,
Wadakkancherry,
Trichur District- 680 589,
presently working as Ferro Printer
in the office of the Deputy Chief
Engineer(CN), Southern Railway,
Ernakulam. .. Applicant

(By Advocate Sri Chincy Gopakumar)

vs.

1. Union of India,
rep. by the General Manager,
Southern Railway, Chennai-600003.
2. Chief Engineer(Construction),
Headquarters Office,
Works Construction Branch, Southern Railway,
Egmore, Chennai-600 008.

.. Respondents

(By Advocate Smt.Sumathi Dandapani)

The Application having been heard on 25.11.02, the Tribunal
on 4.12.2002 delivered the following:-


.2.

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:


The applicants 1 to 3 working as Workmate under Section Engineer, Southern Railway, Trivandrum Central, Material Checker in the office of the Deputy Chief Engineer(CN), Southern Railway, Ernakulam and Ferro Printer in the office of the Deputy Chief Engineer(CN), Southern Railway, Ernakulam, have filed this application challenging the order at Annexure A1 dated 20.12.2000 to the extent they are by the said order repatriated to the open line with reduced status and pay. The facts can be briefly stated as follows.

2. The first applicant who commenced service as an open line casual labourer, was granted temporary status as Khalasi in the scale Rs.196-232 with effect from 21.9.82 . He was empanelled as a Gangman in the scale Rs.775-1025 under PWI, Trivandrum on 27.6.89. He was then transferred to the construction organisation on 10.1.90 as a Lascar in scale Rs.750-940 on his own request duly maintaining his lien on the post of Gangman in Trivandrum Division. Based on his seniority in that unit, he was promoted as Sr.Gangman in the scale Rs.2650-4000 with effect from 1.3.93 and has been promoted as Workmate(adhoc) in scale Rs.3050-4590 purely on adhoc basis in the construction organisation. The second applicant commenced his service as project casual labourer , was granted temporary status as Khalasi in the scale Rs.196-232 w.e.f. 1.1.83 , empanelled as Khalasi in the scale Rs.750-940 in the Trivandrum Division with effect from 27.4.92 but was retained in the construction



organisation maintaining his lien in the Trivandrum Division and has been promoted as Material Chaser in the scale Rs. 3050-4590 with effect from 1.12.99 purely on ad hoc basis in the construction organisation. The third applicant also commenced service as a project casual labourer , was granted temporary status as Man Mazdoor in scale Rs.196-232 with effect from 1.1.84 , was empanelled as Khalasi in the scale Rs.750-940 w.e.f. 27.4.92 and was retained in the construction organisation maintaining his lien in the Trivandrum Division and has been promoted as Ferro Printer in scale Rs. 3050-4590 w.e.f 1.12.99 purely on ad hoc basis in the construction organisation. As they have been continuing in the construction organisation for a long time, coming to know that by the impugned order they were being repatriated to the open line as Senior Gangman in the scale Rs.2650-4000 and as Khalasis in the scale Rs.2550-3200 respectively, they have filed this application jointly seeking to set aside the impugned order Annexure A1 to the extent it affects them and for a direction to the respondents to see that the applicants are retained in the construction organisation so far as various works are being carried on in the construction wing. It is alleged in the application that repatriation of the applicants who have been working for a very long time in the construction organisation, is arbitrary, irrational and wholly unjustified.

3. The respondents in their reply statement contend that the repatriation of the applicants to their parent




.4.

divisions became necessary on account of reduction in construction work and great financial crunch and that as the applicants hold lien in their parent divisions, the action is unassailable. Regarding the claim of the applicants that their pay also have been reduced, the respondents contend that the applicants have been repatriated to the posts in their parent divisions on which they hold lien and they cannot get protection of the pay enjoyed by them on their promotion on ad-hoc basis in the construction organisation.

4. The applicants have filed a rejoinder in which they contend that the construction organisation is not a temporary one, but a permanent establishment and that having continued, the applicants in the construction organisation for a very long time, they have to be treated as permanent employees of the construction organisation and therefore their repatriation, is unjustified. That there is reduction in work has been disputed. The applicants have referred to a letter dated 20.4.2000(Annexure A6) written by the Headquarters, Personnel Branch, Chennai to the CAO, Construction, Madras , wherein it is seen stated that repatriation to the Division without following any principle and without ascertaining the vacancies for accommodating those repatriated was creating administrative problems.


5. An additional reply statement has been filed by the respondents in which they reiterate the contention that for want of work in the construction organisation, 320 employees




of various categories have been repatriated, to open line during 2000-2001 and that there is no merit in the claim of the applicants that they have to be retained in the construction organisation, treating that they are permanent employes there.

6. We have heard the learned counsel appearing for the parties and have perused the materials on record.

7. The learned counsel of the applicants vehemently argued that the applicants having been retained in the construction organisation for a very long time, that the applicants 2 and 3 from the very inception of their service and the first applicant ever since 1990, they should be treated as permanent employees of the construction organisation and their repatriation is unjustified. The learned counsel of the respondents on the other hand argued that the construction organisation being a temporary establishment, it is manned by staff drawn from the open line on deputation retaining their lien with the Division and that they have got to be repatriated to their parent division on completion of work. The ad hoc promotions earned by them during their deputation would be tenable so long as they are on deputation and they will have to take their position in the parent division on the posts on which they hold lien, argued the learned counsel. The case of the respondents that the first applicant hold a lien in the post of Senior Gangman in the scale of Rs.2650-4000 and that applicants 2 and 3 hold lien on the post of Khalasis in the



scale Rs.2550-3200 are not disputed by the applicants. The learned counsel of the applicants relying on Annexure A5 letter dated 2.1.90 from the Divisional Personnel Officer, Personnel Branch, Trivandrum recommending his transfer to the construction organisation argued that the posting of the first applicant was not on deputation, but on a permanent transfer basis. We do not find any force in this argument. What is stated in Annexure A5 is only that the first applicant had given his declaration to work as Lascar in the lower grade of Rs.750-940 and that his transfer to construction division was recommended by the DEN/TVC. It does not mean that the transfer of the applicants to the construction organisation was not on deputation. That the Headquarters, Personnel Branch, Chennai has written in letter to CAO, Construction, Madras (Annexure A6) that construction organisation is not following any principle on the repatriation and that it was not possible to accept pick and choose policy, does not improve the case of the applicants in this case because this has no reference to the repatriation of the applicants. It has not been established by the applicants that any guidelines in regard to repatriation has been violated. Since the applicants are deputationists in the construction organisation, their repatriation to their parent Division for paucity of work is inescapable, unexceptionable and non-assailable, so long as there is no allegation of mala fides or infraction of statutory rule or binding instruction. As it has not been established that there has been any violation of any statutory rule or instructions and as no mala fides has been

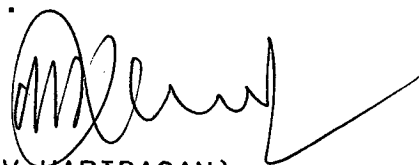


alleged, we are of the considered view that judicial intervention is not justified in the matter. Since there is no provision for protection of the post held by the applicants on cessation of deputation, the reduction in pay is only a natural consequence of repatriation. The applicants do not have a legitimate grievance on that score also.

8. In the light of what is stated above, we find no merit in this application and therefore we dismiss the same, leaving the parties to bear their own costs.



(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)
VICE CHAIRMAN

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APPENDIX

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| 1. | Annexure A1 | True copy of office order No. C/49/2000 dated 20.12.2000 issued by the 2nd respondent. |
| 2. | Annexure A2 | True copy of letter dt. 14.11.2000 issued by 2nd respondent. |
| 3. | Annexure A3 | True copy of representation dated 28.12.2000 submitted by 2nd applicant before the 2nd respondent. |
| 4. | Annexure A4 | True copy of sanction order issued by the office of the Deputy Chief Engineer(CN),Ernakulam dt.10.11.97. |

5. Annexure A5 True copy of letter dt. 2.1.90
(No.V/P677/I/Engg.Vol.IV (Pilot) by
Srnr.Rly.
6. Annexure A6 True copy of letter dt. 20.4.2000
PCCO Or) Action Plan -00-01 by
Srnr.Rly.
7. Annexure A7 True copy of circular No.P(S)676/
1/5/Surplus/Vol.IV dt. 26.3.1976

Respondent's Annexures:

1. Annexure R1 Photocopy of order of Hon'ble
C.A.T., New Delhi, rendered in O.A.
Nos.103/1997 and connected cases,
dated 4.12.2000.
2. Annexure R2 Photocopy of office order No.
55/92/WP dated 9.4.2002 by the
Divisional Personnel Officer,
Southern Railway, Trivandrum, vide
Ref.No.V/P.677/I/Vol.5 referred to
in the reply statement.