

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 491/2000

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

Joseph Antony S/o Antony
Churatharachira, Vaisyam Bhagam P.O.
Chkambakulam Pin-688 505.
presently working as Khalasi
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. Executive Engineer (Construction)
Southern Railway
Trivandrum Central..
4. Senior Divisional Personnel Officer,
Southern Railway
Palghat.

Respondents

By Advocate Mr.P. Haridas

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant filed this O.A. aggrieved by A1 office order dated 21.11.91 issued by the second respondent by which he has been repatriated to his parent Division viz. Palghat Division.

2. According to him he had been recruited as Mate (Mistry) w.e.f.. 24.2.82 by the Inspector of works (Construction), Palghat. Subsequently he was transferred to work under Inspector of Works, Podannur. On 10.5.85 he was sent back to work under the Inspector of Works (Construction), Palghat. Subsequently he was transferred to work under the Inspector of

Works Construction, Calicut. He had studied upto ITC course after SSLC. He was offered by A2 order dated 21.11.91 appointment as temporary Gangman in the scale of Rs. 775-1025. He reported under PWI/QLD on 30.11.91 as a Gangman. Due to personal difficulties in working in open line as Gangman, away at Calicut he requested the second respondent to post him either as Lascar or as Khalasi or as Watchman in the Construction branch. Thereupon the Executive Engineer, (Construction) Calicut by A5 order dated 7.4.92 posted him as Khalasi in the scale of Rs.750-940 under IOW (Construction), Faroke against a sanctioned post. Relying on A6 by which he had been granted increment by the Executive Engineer, (Construction), Calicut he submitted that he was being treated as a staff under the Construction wing. According to him he had not at all retained his lien in the Open line. While so he represented to the second respondent that he may be transferred to Trivandrum Division by A7 dated 24.8.95 and by A8 order dated 15.9.95 he was transferred to Trivandrum Division. According to him as he had opted for lower scale of pay only for his own convenience and the same was accepted by A4, A5 and A8, A1 was liable to be ignored. According to him the same was violative of the principles of natural justice, illegal and unsustainable.

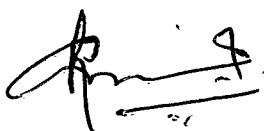
3. Respondents filed reply statement resisting the claim of the applicant. According to them he continued to hold his lien as Gangman in the office of the PWI/Quilandi/Trivandrum Division. He was attempting to resist his repatriation transfer, made on genuine grounds, citing flimsy and irrelevant reasons. He was working in a lower grade as a Khalasi on a temporary basis in the Construction organisation under Dy CE/CN/TVC. He had been ordered to join back to the parent unit in the administrative exigency. Due to severe financial crunch



and conclusion of certain projects, the Construction Organisation had been considerably reduced. As some projects had reached the stage of completion, the construction organisation had to reduce its works force and accordingly it had been proposed to repatriate 320 staff in different categories to the Open Line which had been approved by the General Manager. The applicant belonged to the vital category of Gangman and there were a number of vacancies of Gangman in the Open line. It was submitted that not only the applicant but nearly 150 Other Gangmen belonging to various divisions had been repatriated. According to them the repatriation was ordered in the interest of the organisation. A4, A5 and A8 relied on by the applicant were only transfer orders of the applicant between one field unit and another and would not confer on the applicant any right to continue in the Construction Unit. They relied on the order of the Allahabad Bench of this Tribunal in O.A. No. 1088/91 (G.R. Sethi Vs. Union of India), judgment of the Hon'ble Supreme Court in Union of India Vs. H.N. Kirtinia (1989(3) SLJ 44 (SC)), order of the Madras Bench of this Tribunal in O.A. No. 456/98 (R. Thangaraj and Others Vs. Union of India), and the judgment of the Hon'ble High Court of Madras in Writ Petition No. 160699 and WMP No. 2308/99 in support of their submissions.

4. Heard the learned counsel for the parties.

5. Learned counsel for applicant took us through the factual aspects as contained in the OA and submitted that A1 impugned order was issued ignoring A4, A5, A6 & A8, was violative of principles of natural justice and hence illegal and unsustainable. As the applicant had opted for a lower scale of pay only for his continuance in the Construction wing repatriating him to open line was discriminatory and arbitrary.

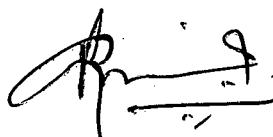


6.. The learned counsel for the respondents reiterated the averments in the reply statement. He drew our attention to the order of this Tribunal in O.A. 1351/2000 dated 18.7.20001 and OP No. 22478/2001 by which O.P. filed against the order of this Tribunal was dismissed by the Hon'ble High Court of Kerala.

7. 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.

8. We find from A3 that the applicant had been posted as Gangman in PWI/QLD's Section by Sr. DPO, Palghat. This would indicate that his lien is maintained in Palghat division. By A1 order dated 10.4.2000 the impugned order he had been transferred to PWI/QLD in Palghat Division. As it is due to severe financial crunch and completion of some projects and for the reasons that construction organisation had to reduce the work force that the applicant along with others were being repatriated, the same could not be faulted. This Tribunal has held so in O.A. 1351/2000 by order dated 18.7.2000. The said order has been upheld by the Hon'ble High Court of Kerala in its judgment in OP NO. 22478 of 2001 on 6.8.2001. We have also held so in our common order in O.A. No. 490/2000, 662/2000 and 948/2000. In OP NO. 22478/2001, the Hon'ble High Court of Kerala held:

"2. We are of the view that this court in this jurisdiction is not justified in interfering with the order of the repatriation to the open line especially when petitioner could not establish violation of any statutory rules or arbitrariness or malafides in the order passed by the administration. We are of the view that it is not for the petitioner to decide as to where he should work whether it is in the construction wing or open line. It is for the department to decide when



an employee be repatriated to the parent unit. A variety of factors have to be looked into by the Railways in their administrative management and execution of work. It would not be possible for the Tribunal or this Court to determine as to when an employee be repatriated. Unless there is a clear case of malafide or that the order has been issued by violation of any statutory provision this court is not justified in interfering with the order passed by the department. Under such circumstances we find no reason to entertain this writ petition.

Writ petition lacks merits and the same is dismissed.

9. In this Original Application the applicant had not advanced any ground of violation of any statutory provisions. Similarly, even though it is stated that A1 order is arbitrary, no evidence as to how the same is arbitrary has been produced. The respondents had submitted that it was due to severe financial crunch and reduction in workload in construction wing that repatriation had been ordered. It is for the respondents to decide as to how many employees should be kept in the Construction organisation and in what categories.

10. In view of the foregoing we are of the view that there is no merit in this Original Application and the same is liable to be dismissed and the applicant is not entitled for the reliefs sought for. We do so accordingly leaving the parties to bear their respective costs.

Dated the 31st October, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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APPENDIX

APPLICANT'S ANNEXURES

- A1 True copy of office order No. 43/2000/TS dated 10.4.2000 issued by the 2nd respondent
- A2 True copy of office order No. J/W.11/101/91 dated 21.11.91
- A3 True copy of written representation addressed to the 2nd respondent dated 8.12.91
- A4 True copy of Order of the 4th respondent dated 6.4.92
- A5 True copy of order No. P.676/CN/CLT dated 7.4.92
- A6 True copy of the statement of increments granted in favour of staff under the Executive Engineer, construction, Calicut for the month of February, 1995.
- A7 True copy of representation dated 24.8.95
- A8 True copy of the office order NO. C 119/95 dated 15.9.95 issued by the 2nd respondent.

RESPONDENTS' ANNEXURES -NIL