

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO.587/2006

THIS, THE 2nd DAY OF SEPTEMBER, 2008

CORAM:

HON'BLE SMT. K.N.K.KARTHIAYANI, ADMINISTRATIVE MEMBER

HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

V.O. Joseph
S/o. Ouseph
Technical Mate
(Southern Railway Construction
Organisation)
Residing at: Vidyathil Panekkadan
V.R. Puram Road
Near Railway Station, Chalakudi
Trichur District.

... Applicant

(By Advocate Shri T.C.G. Swamy)

vs.

1. Union of India represented by the
General Manager, Southern Railway
Headquarters office, Park Town P.O
Chennai-3.
2. The Chief Administrative Officer
Southern Railway
Construction Organisation
Egmore, Chennai-8.
3. Senior Divisional Personnel officer
Southern Railway, Trivandrum Division
Trivandrum-14.
4. The Chief Engineer/Construction
Southern Railway, Egmore, Chennai-8.

... Respondents

((By Advocate Sumathi Dandapani Sr.)



O R D E R
HON'BLE SMT. K.N.K. KARTHIAYANI, ADMINISTRATIVE MEMBER

The facts of the case as mentioned in the O.A are:

2. The applicant was initially appointed as Technical Mate (casual labour) in the Construction Organisation of Southern Railway in the year 1982. Duties of Technical Mates involve supervision of construction of works. He was regularised as a Gangman in the Trivandrum Division of Southern Railway and was retained in the Construction Organisation by memorandum dated 10.4.1997 (Annexure-A1). The applicant's name is at sl.no.32 in Annexure-A1. By a Memorandum dated 22.5.1997 (Annexure-A2), he was retained on adhoc basis in the Construction Organisation itself as Technical Mate. On allegations of misconduct, he was removed from service vide memo dated 6.10.1997 with effect from 27.1.1995 (Annexure-A3). His appeal against the order of removal was rejected. Aggrieved, he filed O.A. No.144/99 in this Bench of the Tribunal, challenging the punishment order of removal from service and the appellate order. This Bench of the Tribunal decided the O.A on 24.7.2001 vide order at Annexure-A4. The decision was challenged by the Railway authorities before the Hon'ble High Court of Kerala, but the Hon'ble High Court confirmed the order of this Tribunal on 9.11.2005. As the applicant was still not taken back to duty, he filed Contempt Petition No.16/02 in O.A. 144/99. The respondents filed a reply affidavit producing an office order dated 20.2.2006 (Annexure-A8). In Annexure-A8, the respondents have ordered the reinstatement of the applicant as Senior Gangman in the Open Line "as there was no construction office at present functioning at Thrissur as well as Guruvayur". The applicant was

113

posted to work under the Section Engineer, Permanent Way, Kottayam. The contempt petition was dismissed, taking note of Annexure-A8.

3. The applicant submits that Annexure-A8 is repatriation from the CN Organisation to the Open Line Organisation on the alleged ground that the office of the Executive Engineer, Construction was not available at Thrissur or Guruvayur. The above contention is erroneous and contrary to the legal position. As the applicant was working in the Construction Organisation right from his initial engagement, the repatriation of the applicant can only be based on his length of service on the principle of 'last come first go'. Persons who were working under the Executive Engineer, Construction at Thrissur and Guruvayur, upon the closure of those offices were not repatriated back to their parent division; on the contrary they were transferred to various other offices in the Construction Organisation itself like Ernakulam, Trivandrum and Calicut etc. Many of the applicant's juniors in Annexure-A1/A2 are still retained in the construction organisation itself. The applicant has cited two cases, one Shri Anil J.R and Shri Shaji M.L who are still continuing in the Construction Organisation but who are junior to the applicant.

4. While implementing the directions of this Tribunal, the respondents did not contact the construction organisation to find out whether the applicant could continue in the said organisation or whether the applicant was liable to be repatriated to the parent organisation. The applicant had also submitted a representation dated 3.4.2006 addressed to the second respondent, which is at Annexure-A9. The said



representation is still not disposed of. The applicant is yet to join at Kottayam as ordered in Annexure-A8 since the order directing him to join as Sr. Gangman is patently illegal. The said direction is out of extreme malice and vendetta.

5. The applicant further submits that he is a Diploma Holder in Civil Engineering and was appointed as a casual Technical Mate in the Construction Organisation and treated as temporary with effect from 1.1.1984. As many of his juniors are continuing in the Construction Organisation despite their absorption as Gangman, the applicant prays that the impugned order at Annexure-A8 may be quashed to the limited extent that it posts the applicant as Sr. Gangman in the Open Line Organisation instead of as Technical Mate in the Construction Organisation. Further, the applicant prays for a direction to the effect that on reinstatement he is entitled to continue in the Construction Organisation as a Technical Mate in preference to/along with his juniors with all consequential benefits arising therefrom.

6. The respondents have filed their objection statement and also an additional reply. It is denied that the order at Annexure-A8 has been issued without consultation of the Construction Organisation. The non-availability of suitable post in CN organisation was ascertained before the issue of the impugned order. The applicant belongs to the vital category of Gangman (now re-designated as Trackman) of Trivandrum Division and the service of Gangman is always in demand on account of the very nature of the work assigned to them. Further, due to shrinkage in funds




allotment and the consequent completion of many projects, the Construction organisation recently repatriated quite a few employees to Open Line. The Construction field offices which functions at various places like Alleppey, Kayamkulam, Trichur, Guruvayur Etc. were closed down after the completion of the work in those areas. Further, it is denied that the applicant has sent any representation as at Annexure-A9. The applicant is asked to prove its delivery to the administration.

7. In the order of this Tribunal dated 24.7.2001, this Tribunal had declared that the applicant was a Gangman. This was confirmed by the Hon'ble High Court of Kerala by order dated 9.11.2005. The applicant's prayer in O.A.144/99 was to treat him as Gangman as he was not a Technical Mate. The applicant is now trying to mislead the Tribunal by contending that he is a Technical Mate. Further, the applicant was reinstated as Sr. Trackman Gr.I duly extending all consequential benefits like seniority, pay fixation etc. on par with his juniors in Trivandrum Division. Having taken the plea that he was a Gangman in the previous O.A, he is estopped from contending that he has to be retained in the Construction Organisation. In the said O.A the applicant's main challenge against the disciplinary action taken by the Executive Engineer (CN) was that as he was a Gangman, his disciplinary authority was not the Executive Engineer (CN), Guruvayur but Senior Divisional Personnel officer, Trivandrum Division. It is further submitted that the applicant was not at all repatriated as alleged but was removed from service for his unauthorised absence which was set aside by this Tribunal on technical grounds. The applicant's present position cannot be compared with



other employees working in Construction Organisation and the same is irrelevant to the present issue. It is denied that anybody by name Anil J.R is working with the applicant in Construction Organisation at present. Further, Shri M. Shaji has been allowed to continue as casual labour, Technical Mate as per the direction of this Tribunal in O.A.636/97 and connected cases (order dated 28.8.2000). It is strange that the applicant prays to treat him as Technical Mate when in the earlier O.A he had claimed that he belongs to the category of Gangmen and his appointing authority was Senior Divisional Personnel officer, Trivandrum; his status was not Technical Mate and the appointing authority was not Executive Engineer, it was contended. The executive Engineer's competency to impose the penalty of removal was questioned in the earlier O.A. It is further submitted by the respondents that the power to make appointment, empanelment and providing lien are vested with the Open Line Division administration only and the Construction Organisation is not vested with such kind of powers. Being a temporary organisation and as the field units are liable to be closed at any time after the completion of assigned projects, the staff working in Construction Organisation are borrowed from Open Line Division or Headquarters office where their lien is maintained to avoid any inconvenience in the service matters regarding promotion and arranging their settlement of dues at the time of their retirement.

8. Heard the counsel for both sides. Learned counsel for the applicant submits that as the penalty order of removal from service was quashed and set aside by this Tribunal, the applicant is deemed to have



continued in service after the date of removal, i.e., 27.1.1995. The Construction Organisation at Thrissur and Guruvayur was functioning on that day i.e. 27.1.1995 and the applicant should have been continued in the same organisation till it was wound up. Even after winding up (date not known) he should have been allowed to continue in other Construction Organisation like his juniors.

9. Learned counsel for the respondents reiterated that the applicant is estopped from claiming the status of Technical Mate as he had approached this Tribunal in O.A. 144/99 claiming that his status was that of a Gangman. The applicant has already joined the office at Kottayam as Senior Trackman Grade-I on 29.9.2006. The applicant had also approached this Tribunal in O.A.154/2007 (which was decided on 9.7.2008) with a prayer that he should be allowed to take part in the examination for promotion and the prayer was granted. His substantive post is that of Gangman only and his junior is continued as Technical Mate only because of the orders of this Tribunal in O.A.636/97 etc.

10. Learned counsel for the applicant submitted that there is absolutely no intention to mislead this Tribunal. Full facts were submitted in O.A.144/99. The applicant's substantive post was that of a Gangman and his appointing authority was Senior Personnel Officer who is in the Junior Administrative Grade. The punishment order of removal from service was issued by the Executive Engineer who is lower in rank than the appointing authority (being only in senior time scale) was set aside by this Tribunal as a Government servant cannot be removed from



service by an authority lower in status than the appointing authority. It is already an established principle of law that in retrenchment/repatriation, first come last go should be observed. When the juniors to the applicant continued as Technical Mate, which is of a higher pay scale, the applicant should not have been retrenched/repatriated.

11. We agree with the learned counsel for the applicant that there is no misrepresentation in the O.A. The applicant has all along contended that his substantive post was that of a Gangman. That is why in O.A.154/2007 he sought permission to appear for the examination for promotion to the higher post.

12. It is also true that in the case of adhoc and temporary employees, retrenchment should be on the principle of last come first go. In State of U.P. vs. Kaushal Kishore Shukla, (1991) 1 SCC 691, a 3 Judges Bench of the Hon'ble Apex Court held:

“5.-----
the principle of 'last come first go' is applicable to a case where on account of reduction of work or shrinkage of cadre retrenchment takes place and the services of employees are terminated on account of retrenchment. In the event of retrenchment the principle of 'last come first go' is applicable under which senior in service is retained while the junior's services are terminated. But this principle is not applicable to a case where the services of a temporary employee are terminated on the assessment of his work and suitability in accordance with terms and conditions of his service”----- (underlining done by us).

The respondents have not contended that it is because of the applicant's



unsatisfactory service that he was not continued as a Technical Mate. It is however submitted that the juniors to the applicant were posted back as Gangman in the Open Line Organisation but one of the juniors Shri Shaji cited in this O.A was allowed to continue as Technical Mate only because of the orders of this Tribunal in O.A.636/97. A perusal of the order of this Tribunal in O.A.636/97 and connected cases reveals that the applicant's in those O.As were allowed to continue as Technical Mate on condition that they would be considered for regularisation in their turn as skilled artisans to the extent of 25% of the posts for direct recruitment. As the applicant in the present O.A had not approached this Tribunal along with the other applicants in the batch of cases (O.A.636/97 and connected cases) the applicant has not secured any right to be treated in the same manner as those in the batch cases mentioned above, specially when the continuance of the applicant in those O.As in the higher post of Technical Mate was subject to certain conditions, viz., regularisation to the extent of 25% of the posts for direct recruitment.

13. In Central Welfare Board and others vs. Anjali Bepari (Ms) and Others, (1996) 10 SCC 133, the Hon'ble Apex Court dealt with a casual employee who had continued against a casual vacancy for a long period of over 3 years and who claimed regularisation upon the project being wound up. In paragraph-3, a Division Bench of the Hon'ble Apex Court ordered:

"3.....
.....It is not in dispute that the project is being wound up

7/11


in a phased manner and the services of the employees are being dispensed accordingly. It is stated by the learned counsel for the petitioners that no one junior to the respondent was allowed to continue in the said project. It is stated that there are other projects being operated similarly, but the persons engaged therein also are continuing on temporary basis and are senior to the respondent. Therefore, she cannot be regularised in any other scheme. In view of the above stand, we direct the petitioners to continue the respondent in any other temporary scheme but keeping in mind the overall seniority of all the persons; the dispensing with the services should be on last come first go basis i.e., the junior most incumbent has to go out first".....(underlining done by us)

14. In both the cases cited above, it was a matter of retrenchment where the employee (casual/temporary) was thrown out of service. In the case before us the applicant holds a substantive post as 'Gangman'. The pleadings in the O.A itself mentions 'repatriation' (see paragraph 3 above). Hence the law laid down by the Hon'ble Apex Court in the two above mentioned decisions is not applicable to the applicant.

15. The applicant has stated that he has submitted a representation at Annexure-A9 dated 3.4.2006. The grievance ventilated in Annexure-A9 is that the posting order (Annexure-A8) results in financial loss to the applicant as well as reputation and status earned by him for the last 25 years as a qualified professional (Diploma Holder). Here, we observe that the applicant's case is similar to the case decided by the Hon'ble Apex Court in Bhadei Rai vs. Union of India and Others, (2005) 11 SCC 298. In the above case the appellant was a daily rated worker given temporary status on Group D Post of Khalasi and later granted Group 'C' post of Rigger on a higher pay scale. Appellant was repatriated to his parent division in Group 'D' post carrying lower pay

scale and regularised and absorbed in that lower post. It was held that as the promotion was purely on adhoc, order of his reversion to the parent department cannot be questioned. However, the appellant was found to be entitled to relief of pay protection and consideration of his case for regular appointment to Group 'C' post on the basis of his long service in that post and qualifying the screening test.

16. Having regard to the above legal position, we direct the respondents to consider and redress the grievance of the applicant that the posting as Sr. Trackman Grade I has resulted in financial loss to him, in the light of the decision of Apex Court in Bhadei Rai vs. Union of India. If the applicant desires so, he shall submit a detailed representation to respondent no.2 within 10 days of receipt of a copy of this order, as the respondents are denying the receipt of any representation as at Annexure-A9. The respondents are directed to consider the representation, if any, received from the applicant in accordance with the ratio of the decision of the Hon'ble Apex Court in Bhadei Rai (supra) and communicate the same by a reasoned and speaking order to the applicant within 45 days of the receipt of such representation. If the applicant chooses not to submit any fresh representation, within 60 days of receipt of a copy of this order, the respondents shall take a decision in the matter of protection of the applicant's pay and communicate the same to the applicant.



14. The O.A is disposed of as above. In the circumstances of the case, there shall be no order as to costs.


(GEORGE PARACKEN)
JUDICIAL MEMBER


(K.N.K. KARTHIAYANI)
ADMINISTRATIVE MEMBER

mr.