

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 138 of 1998

Monday, this the 18th day of December, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. M. Iqbal, S/o. late Meera Sau,
Gangman, Office of the Senior
Engineer (Permanent Way),
Southern Railway, Trivandrum,
Residing at Kannivilakom Veedu,
Vakkom PO, Kadakkavoor,
Trivandrum District. ...Applicant

[By Advocate Mr. V.R. Ramachandran Nair]

Versus

1. The Divisional Railway Manager,
Southern Railway, Trivandrum.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum.
3. The Senior Divisional Engineer,
Southern Railway, Trivandrum.
4. The Senior Engineer (Permanent Way),
Southern Railway, Trivandrum.
5. The Senior Engineer (Permanent Way),
Nagarcoil, Southern Railway,
Trivandrum Division.
6. The Assistant Engineer,
Nagarcoil Junction,
Southern Railway. ...Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil (rep)]

The application having been heard on 18th of December, 2000,
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to declare that the denial of reengagement of him back to service on production of the fitness certificate is denial of work and opposed to the principles of natural justice and to direct the respondents to reinstate him back to service with all consequential benefits.

2. The applicant was initially engaged as a casual labourer in the year 1972 and worked intermittently till 1980. On 1-10-1980 he was regularly appointed as Gangman. He worked as Gangman from 1-10-1980 to 28-4-1985. While so, he suddenly fell ill due to Rheumatic Arthritis and was bed ridden. He was under treatment from 29-4-1985 to 5-7-1997. Immediately after issuance of fitness certificate by the Doctor he produced the same before the 4th respondent and requested for a direction for issuance of a fitness certificate by the Railway Doctor. He was told that he was already transferred from that section with effect from 20-10-1987. Ultimately, the Assistant Engineer, Nagarcoil Junction, Southern Railway issued the order dated 18-3-1988 to the effect that the applicant has been removed from service by applying Rule 14(ii) of Railway Servants (Discipline & Appeal) Rules, 1968. He has not been proceeded against any disciplinary proceedings for the alleged unauthorized absence. No notice has been issued under any circumstance to the effect of dispensing with the service of the applicant. So says the applicant.

3. Respondents say that the charge memo issued through registered post was returned by the postal authority. There was no response from the applicant. Therefore the disciplinary authority has taken the decision exparte and issued memorandum for removal from service duly exercising the powers conferred by Rule 14(ii) of Railway Servants (Discipline & Appeal) Rules, 1968. The applicant has approached after a period of 13 years absence with a medical certificate from a private practitioner claiming that he should be reinstated in service which is not permissible as per rules. There is no legal infirmity in R-II order.

4. It is the admitted case of the applicant that he worked upto 28-4-1985 and he approached the authority concerned only after obtaining A1 dated 9-8-1997 issued by a private practitioner.

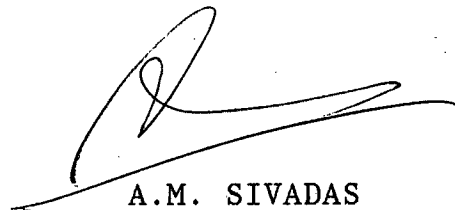
5. R-II is admittedly the order as per which the applicant was removed from service. The applicant is now seeking the reliefs for a declaration that the denial of reengagement back to service on production of the fitness certificate is denial of work and for a direction to the respondents to reinstate him in service. This cannot be done without quashing R-II order. On the very face of R-II, these reliefs are not possible for being granted. As long as there is no challenge against R-II, this Original Application is only to be dismissed.

6. Accordingly, the Original Application is dismissed. No costs.

Monday, this the 18th day of December, 2000



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1. A1 True copy of the Medical and Fitness Certificate dated 9-8-1997 issued by the doctor stating that the applicant is completely recovered from illness and fit to continue old work.
2. R-II True copy of termination order dated 18-3-1988 issued by the Asst. Engineer, Southern Railway, Nagarcoil.