

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 144 of 1999

Tuesday, this the 24th day of July, 2001

CORAM

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

1. V.O. Joseph, S/o Ouseph,
Ex-Mate, Southern Railway, Trichur,
residing at: Vidayathil Panakkada,
Vellikkulam Road, PO Chalakkudi,
Trichur District.Applicant

[By Advocate Mr. T.C. Govindaswamy]

Versus

1. Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO, Madras-3
2. Deputy Chief Engineer (Construction),
Southern Railway,
Ernakulam Junction, Ernakulam.
3. Executive Engineer (Construction),
Southern Railway, Guruvayoor
4. The Chief Engineer (Construction),
Southern Railway, Egmore, Madras-8
5. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division, Trivandrum-14
6. The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division, Trivandrum-14Respondents

[By Advocate Mrs Sumathi Dandapani]

The application having been heard on 24-7-2001, 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 quash A-10 and A-12 and to direct
the respondents to reinstate him to service with all
consequential benefits.

2. The applicant was initially appointed as a Technical Mate in the Construction Organisation in the year 1982. He was treated as temporary with effect from 1-1-1984. He was empanelled as a Gangman by the Divisional Railway Manager, Southern Railway, Trivandrum and absorbed as a Gangman by the Senior Divisional Personnel Officer, Southern Railway, Trivandrum. He was allowed to continue in the Construction Organisation by providing lien in the open line division. He was served with a major penalty charge memo dated 22-3-1996 by the Executive Engineer (Construction). An enquiry was conducted. As per A-10, he was removed from service retrospectively with effect from 27-1-1995. He submitted an appeal and as per A-12, the appeal was rejected.

3. Respondents resist the OA contending that the applicant was not willing to be absorbed as Gangman. As per his declaration dated 7-5-1993, he continued as a casual labourer Technical Mate. At the time of issuing the charge sheet the applicant was a casual labourer (Technical Mate attained temporary status) on unauthorised absence and the principal employer was Executive Engineer. Though the applicant was absorbed as Gangman by the Divisional Personnel Officer and promoted him as Mate by the Chief Engineer, those orders were not effected since the applicant was facing the enquiry. The applicant was not absorbed as Gangman. As he was only a casual labourer with temporary status, the senior scale officer is empowered to issue charge sheet.

4. The applicant has, inter alia, contended that A-10 order is issued by a senior scale officer and therefore it is without jurisdiction. On this aspect, what the respondents say is that

though the applicant was absorbed as Gangman by the Divisional Personnel Officer, that order was not effected since the applicant was facing the enquiry.

5. A1 dated 10-4-1997 says that:

"In terms of Sr.DPO/TVC Memorandum quoted above, the casual labourers of CE/CN/MS Unit, shown in the enclosed Annexure I who are found fit in Class B-1 and have already been empanelled as Gangman in Engg.department are regularised in Engg.department/TVC division and allowed to continue in CN organisation on adhoc basis. They are provided lien as Gangman in scale Rs.775-1025 in the open line."

6. It will be profitable at this juncture to quote what the respondents have stated in the reply statement:

"Eventhough the applicant was absorbed as Gangman by the Divisional Personnel Officer and promoted him as Mate in scale Rs.950-1500 on adhoc basis by the Chief Engineer, these orders were not effected since the applicant was facing the enquiry as stated above. Since the applicant was not absorbed as Gangman and he was a casual labour with temporary status only, the senior scale officer is empowered to issue charge sheets to the applicant."
(Emphasis supplied)

So, it is clear that the respondents are saying simultaneously the applicant was absorbed as Gangman and the applicant was not absorbed as Gangman.

7. The learned counsel appearing for the respondents relying on R-1 submitted that the applicant has expressed his unwillingness to be absorbed as Khalasi/Gangman. R-1 is of the year 1993. A1 is of the year 1997. If the respondents have acted on R-1, they could not have issued A1 which contains the name of the applicant at Sr.No.32. Respondents cannot say that they are relying on R-1 for the purpose of taking the stand that the applicant has expressed his unwillingness to be absorbed as Khalasi/Gangman, when subsequently they have issued A1, wherein the applicant's name is also figuring.

8. The learned counsel for respondents submitted that A1 order has not come into effect. Apart from the averment in the reply statement and the submission across the bar, there is no material to show that A1 has not come into effect.

9. The learned counsel for respondents further submitted that the applicant has not taken charge as Gangman by virtue of A1 and therefore he continues as a casual labourer. On the face of A1, there is difficulty to accept this submission since A1 specifically says that all the incumbents figuring therein have already been empanelled as Gangman in the Engineering Department and are regularised in the Engineering Department and allowed to continue in the Construction Organisation on adhoc basis. When those persons have been allowed to continue in the Construction Organisation on adhoc basis, there is no question of taking charge by them as Gangman.

10. The position is that from the date of A1 the applicant has become a Gangman. That being so, as on the date of issuance of A-10 he was a Gangman. The learned counsel appearing for the respondents fairly submitted that if the applicant was a Gangman, the Executive Engineer who has issued A-10 has no authority or jurisdiction to impose the penalty on the applicant.

11. As the applicant was a Gangman by virtue of A1 and as the order A-10 removing him from service is issued by the Executive Engineer and as the Executive Engineer has no jurisdiction to issue A-10, A-10 is liable to be quashed for the reason that the applicant has been appointed as a Gangman by an officer in the junior administrative grade and the Executive

Engineer is only a senior scale officer. When A-10 is liable to be quashed, A-12 the appellate order is also liable to be quashed.

12. Accordingly, A-10 and A-12 are quashed. We make it clear that this order will not stand in the way of respondents in proceeding against the applicant in accordance with law.

13. The Original Application is disposed of as above. No costs.

Tuesday, this the 24th day of July, 2001


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

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| 1. | A1 | True copy of Memorandum No. P.564/I/CN/Genl. dated 10-4-97 issued by the 4th respondent.. |
| 2. | A-10 | Penalty Advice No. P.182/CN/Guv(1) dated 6-10-97 issued by the 3rd respondent. |
| 3. | A-12 | Appellate order No. P.182/CN/Guv dated 27-2-98 issued by the 2nd respondent. |
| 4. | R-1 | True copy of the declaration of the Casual Labour Technical Mate (Ty. Status) dated 7-5-93. |