

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 159 of 1995

Thursday, this the 14th day of March, 1996

CORAM:

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN

HON'BLE MR S.P. BISWAS, ADMINISTRATIVE MEMBER

P. Sundar,
(Now Probationary Assistant Guard)
Fitter, Remote Control,
Southern Railway, Palghat Division.
Residing at: No. 621-B,
Railway Quarters, Near Nursery School,
Hemambika Nagar, Palghat.

.. Applicant

By Advocate M/s TCG Swamy and KM Anthru

Versus

1. Union of India through
the General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Madras-3
2. The Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
3. Additional Divisional Railway Manager,
Southern Railway, Palghat Division,
Palghat.
4. The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
5. Divisional Electrical Engineer,
Traction Distribution Unit,
Southern Railway, Palghat Division,
Palghat.
6. Traction Foreman,
Remote Control, Divisional Office,
Southern Railway, Palghat Division,
Palghat.
7. The Principal,
Zonal Training School,
Southern Railway, Tiruchirappalli.
8. The Divisional Secretary,
Southern Railway Mazdoor Union,
Divisional Office, Palghat Division,
Palghat.

.. Respondents

By Advocate Mr. PA Mohammed

The application having been heard on 14th March, 1996, the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

Applicant seeks to quash A1, by which he was called back from a training course for Assistant Guards. A further direction to absorb him as Assistant Guard in terms of A9 is also sought.

2. While applicant was working as Fitter in the "Remote Control" cadre, the Railways took a decision to abolish that cadre. By A4 those who were surplus were asked to exercise their options for other posts. Applicant opted for transfer to Madras Division "in the same grade and pay to the Remote Control Wing of Madras Division". Alternatively, he expressed his willingness "to be posted to Rolling Stock Cadre/Avadi or AC Loco Cadre/AJ".

3. Close on the heels of A5, A6 came, whereby applicant stated that he may be considered for appointment as Assistant Guard or Commercial Clerk. Presumably on the basis of this, A9 order was passed stating:

"the request of change of category of Shri P Sunder, Fitter (applicant) in scale Rs.950-1500 as Asst. Guard in scale Rs.950-1400 has been approved by ADRM. His absorption as Asst. Guard in scale Rs.950-1400 is subject to the following conditions:

1. He will rank junior to all permanent, officiating and temporary Asst. Guard
2. He has to undergo the prescribed medical examination and training"

4. On the basis of A9 dated 12.8.94 applicant joined the post of Asst. Guard and he was sent for training. Five months later, by A1 respondents informed applicant:

"the employee is relieved on the afternoon of 27.1.95 to report back at yours (sic) vide your letter cited above..".

5. According to applicant, after acceptance of an offer and joining the post of Assistant Guard, unceremoniously and without even notice, he has been called back from training. This is arbitrary, capricious and not consistent with principles of natural justice, submits Counsel. Counsel for respondents would submit that applicant has been given an "identical post". Feeling that matters could not be left in a fluid state, we adjourned the matter, for Railway Counsel to tell us what the "identical post" is, what the rules relating to appointment of Assistant Guard are, and what the rules relating to deployment of surplus hands are. Counsel for respondents submitted that applicant could not have been appointed as an Assistant Guard, as there was no direct recruitment to that post. We pointedly asked him to show the rules and he placed before us an order of the Railway Board, RBE No. 138/91 dated 1.3.91, (published at page 189 of Bahri's Railway Board's orders on Establishment Vol.II). We do not find a word Assistant Guard, used anywhere in this order. Then we asked him whether there is any rule which stood in the way of applicant being appointed to the post of Assistant Guard. He was not able to show any rule. For all we know, pursuant to A9 applicant was appointed and no valid reason has been shown for cancelling the appointment.

6. After having granted an appointment, it cannot be cancelled at whim, and that too, without notice. The

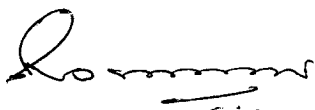
appointment of applicant as Asst. Guard has been cancelled without notice, in a whimsical manner, and without even mentioning any reason. Such rank arbitrariness has no place, in the scheme of things. The Railways having granted him an appointment pursuant to A9, in full awareness of what they were doing, cannot turn round and say that it is cancelled. Even after opportunities were granted to them the Railways could not justify their action. Authorities cannot act arbitrarily or at whim. A situation where unpredictable actions are taken would be anathema to the rule of law. As pointed out by the Supreme Court in Jaisinghani Vs. Union of India & Ors, AIR 1967 SC 1427:

"In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, such decisions should be predictable and the citizen should know where he is".

7. This is a case where no principle is disclosed and is not even known to the authority who has passed the impugned order. We quash Annexure A1 and status quo ante will be restored for all purposes.

8. Original Application is allowed as aforesaid. Parties will suffer their costs.

Dated the 14th March, 1996



S.P. BISWAS
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

List of Annexures

1. Annexure A1:- A true copy of the Order No:ZTC/673/Asst. Guard(initial) dt: 27-1-95 issued by the 7th respondent.
2. Annexure A4:- A true copy of the Letter bearing No:J/P 535/TRD dt: 18-5-94 issued by the 4th respondent.
3. Annexure A5:- A true copy of the representation dt: 30-5-94 submitted by the applicant to the 4th respondent.
4. Annexure A6:- A true copy of the Letter dt:31-5-84 addressed to the 4th respondent by the applicant.
5. Annexure A9:- A true copy of the Order No:J/P 535/VIII/Asst.Guard dt:12-8-94 issued by the 4th respondent.