

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 287 of 1999.

Thursday this the 24th day of June 1999.

CORAM:

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

K. Sasidharan,
Rest Giver Gate Keeper,
Southern Railway,
Level Crossing Gate at K.M. 233/2-3,
Balaramapuram,
residing at :
Paravila Veedu,
Thalayal, Pezhoorkona,
Balaramapuram P.O.,
Trivandrum.

.. Applicant

(By Advocate Shri T.C. Govindaswamy)

vs.

1. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum-14.
2. The Senior Divisional Engineer,
Southern Railway,
Trivandrum Division,
Trivandrum -14.
3. The Senior Divisional Personnel
Officer, Southern Railway,
Trivandrum Division,
Trivandrum -14.
4. The Section Engineer,
Permanent Way,
Southern Railway,
Trivandrum Division,
Trivandrum -14.
5. The Assistant Engineer,
Southern Railway,
Nagarcoil Junction,
Nagarcoil.

.. Respondents

(By Advocate Shri James Kurien)

The application having been heard on 24th June 1999,
the Tribunal on the same day delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant who was a Rest Giver Gate Keeper was
transferred as a Gangman. He has filed this application

alleging that from 6.1.97 onwards he is not being allowed to perform his duties. He states that several representations made by him did not evince any response and therefore, he prays for a declaration that the refusal on the part of the respondents to allow the applicant to discharge the duties from 6.1.97 is arbitrary, discriminatory, unconstitutional and for a direction to the second respondent to allow the applicant to discharge his duties forthwith declaring that he is entitled to have the period from 6.1.97 treated as on duty with consequential benefits including backwages.

2. Respondents in their reply statement have refuted all these allegations. They contend that the applicant remained unauthorisedly absent with effect from 6.1.97, that Memorandum of Charge dated 26.9.97/23.10.97 (R-3) has been issued and that the applicant is not co-operating with the enquiry as he remained unauthorisedly absent continuously. The respondents contend that the applicant is not entitled for any relief.

3. When the application came up for hearing on 29.4.99, noting the statement of the respondents in para 12 of the reply statement that "the applicant never have been prevented by anybody to do his duties", the Tribunal directed the applicant to report for duties before the authority concerned forthwith.

4. When the application came up for hearing today, learned counsel of the applicant states that the applicant has since been taken back to duty, what remains in this case is how the period between 6.1.97 and the date on which the applicant has been taken back on duty would be regulated. While the applicant maintains that, he has not been permitted to perform duty, the respondents assert that the applicant remained unauthorisedly absent. It is precisely on this basis that the respondents have issued a Memorandum of Charges. However, the applicant's counsel states that the Memorandum of Charges has not actually been served on the applicant. Now, that the

applicant has joined service, the counsel on both side agree that the application can be disposed of directing the respondents to serve the Memorandum of Charges (R-3) on the applicant, if it has not already served on him and then to complete the disciplinary proceedings, and take a final decision after holding the enquiry in accordance with the rules. It is also agreed that the applicant would co-operate with the enquiry and that the treatment of the period in question would abide by the result of the departmental proceedings.

5. In the light of what is stated above and as agreed to by the counsel on either side, the application is disposed of with the following directions:

- a) If the Memorandum of Charges (Annexure R-3) has not already served on the applicant, the same shall be served on him without delay.
- b) The enquiry commenced by issuance of Annexure R-3, Memorandum of Charges, shall be held and completed as expeditiously as possible.
- c) The applicant shall co-operate with the respondents for expeditious completion of the Departmental Proceedings.
- d) The question as to how the period between 6.1.97 and the date on which the applicant rejoined duty shall be treated, will abide by the result of the departmental proceedings.

6. No costs.

Dated the 24th day of June 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

rv

List of Annexure referred to in the order:

Annexure R-3 : Copy of Charge Memo dated 26.9.1997/
23.10.97 issued to the applicant.