

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.. No. 36/2001

THURSDAY, THIS THE 2nd DAY OF JANUARY, 2003.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. P.G. Sukumaran Nair
Typist
Office of the Chief Engineer (Construction)
Southern Railway
Trivandrum.
2. P.T. Vishnu Nampoothiri
Typist
Office of the Assistant Executive Engineer
(Doubling) Southern Railway
Quilon, Trivandrum Division. Applicants

By Advocate Mr. Vellayani Sundararaju

Vs.

1. Union of India represented by
Secretary to the Government
Ministry of Railways
New Delhi.
2. The General Manager
Southern Railway
Southern Railway HeadQuarters Office
Chennai.
- 3/ The Chief Engineer (Construction)
Head Quarters Office
Works Construction Branch
Southern Railway
Chennai.
4. The Chief Engineer (Construction)
Southern Railway
Trivandrum Division.
5. The Assistant Executive Engineer (Doubling)
Southern Railway
Quilon Union Respondents

By Advocate Smt. Rajeswari Krishnan

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants two in number aggrieved by A1 order dated 20.10.2000 of the 3rd respondent reverting them to a different category with lesser pay scales filed this O.A. seeking the following reliefs:



1. To call for records relating to the issuance of Annexure A1 and quash it to the extent of the repatriation ordered by 3rd respondent to the applicants to a lower category with reduced pay scale, by declaring that the said repatriation is highly illegal and untenable as it was issued in violation of the principles of natural justice.
2. To direct respondents 4 and 5 not to relieve the applicants from their present posts as typists and not reduce their pay scale to their disadvantage pending disposal of this Original Application.
3. To issue any other further order or direction this Hon'ble Court may deem fit on the facts and circumstances of the case and.
5. To allow costs to these proceedings.

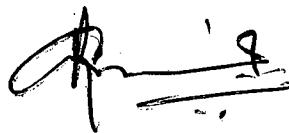
2. According to the averments of the applicants in the O.A. they had been working as typists under the 4th and 5th respondents respectively in the Trivandrum Division. The 1st applicant was engaged as an ELR Khalasi on 16.8.72 in the Trivandrum Division. While so working he was posted as Lascar vide office order of the 3rd respondent No. C.40/80 in the Construction Department. Thereafter he was promoted as Typist on adhoc basis vide A2 office order NO. C.225/88 dated 13.10.88. The second applicant worked as a Typist throughout the entire period of his service. A3 to A7 were true copies of certificates to that effect from the Head of the Units. He was also issued A8 certificate of merit as Typist by the 3rd respondent at the 44th Railway Week of 1999. While working as typist the 1st applicant was transferred and posted as Typist at the 4th respondent's office, Trivandrum vide A9 order dated 7.12.2000. By A-10 order dated 12.12.2000 he was relieved by 5th respondent. According to him respondent No. 1 allowed his working as Typist and belonging to other divisions to continue in the office of the Deputy Chief Engineer (Construction), Trivandrum Division. They mentioned the case of Shri Mohanan Nair typist belonging to Mysore Division, Sri P. A. Sankaranarayanan and Smt. Saradha, who were allowed to work



in the office of of the Dy. Chief Engineer (Construction), Trivandrum Division and Sri K.P. Muraleedharan typist on adhoc basis working at the office of the 4th respondent belonging to Palakkad Division as junior to the applicants in service as Typist and who were not given any repatriation to their parent department. They also referred to P.T. Gopala Krishna Panicker, Smt. Kumari Krishnan (both Sr.Typists) and one Smt. Savithri, Head typist belonging to Headquarters office who were allowed to continue in the Executive Engineer's office (Construction) Ernakulam. Both the applicants aggrieved by A1 preferred representations to the second respondent requesting to cancel the said order. They claimed that they were eligible to be regularised in the category of typists. They submitted that A1 impugned order to the extent of reduction in rank and pay scales and change of category given to them as arbitrary and illegal. They claimed that in A1 order item No. 1 to 8 were given same pay scale and repatriated without changing the categories in which they were working. Item Nos. 9 to 18 including the applicants were given reduced pay scale and change of category. There was a difference of Rs. 400/in the basic pay of the applicants in the proposed repatriation. It was issued without giving any notice to the applicants. Item Nos. 19 to 47 were working as Khalasis and they are repatriated as Khalasis in their respective pay scales without any change. They also referred to O.A No. 666/2000 and the interim order given therein alleging that A1 was illegal and unsustainable and was liable to be quashed to the extent of repatriation given to the applicants. They claimed that both of them were regularised as Lascar.

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3. Respondents filed reply statement resisting the claim of the applicant. They gave the service particulars of the applicants. According to them the first applicant on empanelment was appointed as Gangman in scale Rs. 200-250 under Permanent Way Inspector/CN/NCJ w.e.f. 21.1.80. He was transferred as Lascar in scale Rs. 196-232 to CE/CN/O/MS and later to XEN/CN/O/ERS. He had been provided lien in PWI/Openline/TVC of Trivandrum Division as Gangman w.e.f. 21.1.80 and allowed to continue in Construction Organisation. Meanwhile he was promoted as Typist in scale Rs. 950-1500 on adhoc basis w.e.f. 9.10.88 in Construction Organisation and was continuing as such. The second applicant was appointed as Casual Labourer, Khalasi in scale Rs. 196-232 in Construction Organisation and empanelled as Gangman w.e.f. 21.7.90 in scale Rs. 775-1025 in Trivandrum division and posted under PW1/KTYM. He had joined open line in the office of PW1/KTYM on 21.7.90. Based on his own request he was transferred to Construction Organization as Lascar in scale Rs. 192-232 w.e.f. 24.6.91 duly maintaining his lien in parent unit in open line. He was promoted as Typist on adhoc basis in scale Rs. 950-1500 w.e.f. 1.6.95 in Construction Organisation and continuing as such. According to them due to decrease in the work load of Quilon, first applicant was deputed to work at CE/CN/O/TVC vide A2 order and the same was ratified by Chief Engineer by A-9. Due to surplus staff of typists in Quilon and requirement of Sr. Gangman in Trivandrum Division, the applicants were repatriated to their parent unit. It was submitted that not only the applicants but nearly 320 others had been repatriated. These employees were posted to openline where there were vacancies and their service were required. Thus the repatriation was in the interest of the organisation as a whole i.e. both Construction and Open line units. It was submitted that due

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to severe crunch in financial position of Railways several austerity measures were taken by Railway Board to keep up the expenditure within limits. The Railway Board had slashed the original budget grant for various works by 10% initially and had further enhanced the cut by 15% more. Thereby the total outlay for the various works had drastically come down resulting in further reduction in staff expenditure. Though the sanctions for operation of the work charged posts in Construction Organisation had been obtained upto 30.6.2001 in anticipation of the ongoing projects, due to changed circumstances the Construction Organisation was unable to operate all the posts upto 30.6.2001 necessitating repatriation of some staff. It had also been decided that those posts which had been earmarked as surplus were not to be operated further. It was submitted that the Construction Organisation was a temporary Organisation which drafted regular staff from open line or employed casual labourers and on completion of projects the regular staff were repatriated to their parent unit to the posts and grades in which they held lien. Accordingly the items 1 to 8 in Annexure A1 were repatriated based on their substantive designation to their parent unit. The applicants were promoted as typists in scale Rs. 3050-4590 purely on adhoc basis in Construction Organisation and the same would not confer any right for regularisation, seniority, pay fixation etc. The above conditions had been clearly mentioned in every order wherein the applicants were granted adhoc promotions. The substantive designation of the applicants was Sr. Gangman in scale Rs. 2650-4000 in their parent unit and hence they had been repatriated to their parent unit as Sr. Gangman.

4. Applicants filed rejoinder

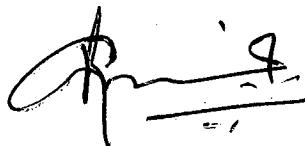
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5. Heard the learned counsel for the parties.

6. The learned counsel for the applicant took us through the factual aspects as contained in the O.A. and submitted that the repatriation of the applicants after reverting them was illegal and was liable to be quashed. He cited the order of this Tribunal in R.A. No. 11/2001 in O.A. NO. 3/2001 dated 4.10.2001. The learned counsel for the respondents took us through the pleas as contained in the reply statement and cited the order of this Tribunal in O.A.. NO. 717/2000 dated 7.8.2001 and O.A. NO. 1351/2000 dated 18.7.2001. She also submitted that order of this Tribunal in O.A.. No. 1351/2000 was taken up by the applicant therein in OP NO. 22478/2001 before the Hon'ble High court of Kerala and the Hon'ble High Court of Kerala dismissed the O.P. by its judgment dated 6th August, 2001.

7. We have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record. One of grounds advanced by the applicants was that junior to them one Sri Mohanan Nair had been retained by the respondents and the applicants had been transferred. We find from the order of this Tribunal in O.A.. NO. 717/2000 that the said Mohanan Nair approached this Tribunal against his repatriation and this Tribunal by its order dated 7.8.2001 held as follows:

3. We have heard the learned counsel on either side and have gone through the pleadings and other material placed on record. The applicant has not been able to substantiate his case that he has been regularly absorbed on a sanctioned post as Lascar in the Construction organisation. From A-1 order No. P.34/82, it is seen that the applicant was absorbed as Gangman and that he was thereafter allowed to work as a Lascar. Since the applicant has not been regularly appointed as Lascar in a sanctioned post in

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the Construction Organisation against a construction reserve post, we are of the considered view that the applicant who has a lien in the open line is liable to be repatriated in case of curtailment of cadre in the Construction Organisation. The case of the applicant that the juniors of the applicant have been retained as Typists and therefore, his repatriation is discriminatory is also untenable because, as per the norms followed by the Railway Administration for repatriation to open line, in the event of curtailment of cadre in the Construction Organisation, persons to be moved last would be those who belong to the territorial division where the project is situated.

4. In the light of what is stated above, we do not find any injustice or discrimination meted out to the applicant. In the result finding no merit, the application is dismissed. No costs.

8. In O.A. No. 1351/2000 dated 18.7.2001 wherein one of the employees Shri V.R. Balakrishnan included in A1 impugned order as item 9 had approached this Tribunal against his repatriation, this Tribunal held as follows:

6. Respondents have specifically stated that due to severe financial crunch and completion some of the projects the Construction Organisation had to reduce its work force and this exercise was done taking into consideration of posts rendered surplus in the Construction Organisation and requirements in Open Line with the approval of General Manager. It is only as a result of the same A-1 has been issued.

7. It is well accepted principle that an incumbent who is on deputation has no right to claim that he should be allowed to continue on deputation. The position of the applicant is purely that of one on deputation and that being so, he has no right to claim to continue on deputation.

8. We do not find any merit in this O.A. and accordingly the is dismissed.

9. When the said applicant took it up before the Hon'ble High Court of Kerala, the High Court held as follows in O.P.22478/2001 on 6.8.2001:

We are of the view that this Court in this jurisdiction is not justified in interfering with the order of repatriation to the open line especially when petitioner could not establish violation of any statutory rules or arbitrariness of malafies in the order passed by the Administration. We are of the



view that it is not for the petitioner to decide as to where he should work whether it is in the construction wing or open line. It is for the department to decide when an employee be repatriated to the parent unit. A variety of factors have to be looked into by the Railways in their administrative management and execution of work. It would not be possible for the Tribunal or this Court to determine as to when an employee be repatriated. Unless there is a clear case of malafide or that the order has been issued by violation of any statutory provision this court is not justified in interfering with the order passed by the department. Under such circumstance we find no reason to entertain this writ petition.

Writ petition lacks merits and the same is dismissed.

10. The applicants do not dispute that their promotions in the construction wing were on adhoc basis. Even though they are claiming that they are entitled for regularisation in Class-III category they have not quoted any authority for the same except citing the judgment of the Hon'ble Supreme Court reported in All India Service Journal. We find that the said decision was taken on the basis of commitment given by the learned counsel for the respondents in that case. In this particular case, the respondents have averred that the applicants had been reverted and repatriated due to severe financial crunch and the posts against which the applicants were working in the Construction Organisations could not be operated further. We find that the High Court of Kerala in OP No. 22478/2001 had upheld the order of this Tribunal in a case similar to that of the applicants in that OA (extracted above). In our view the same would apply in the case of the applicants here also. As regards the reliance placed by the applicants in the order of this Tribunal in R.A. 11/2000 we find that that order was reviewed in the peculiar facts and circumstances pertaining to that case. This Tribunal in that case found that the applicants in that R.A. had been

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repatriated retaining some of their juniors who were working as Khalasis. Further the factual position in this case are not similar.

11. Following the above decisions of this Tribunal in O.A 1351/2001 as upheld by the Hon'ble High Court of Kerala and O.A. No. 717/2000, we are of the view that the applicants in this O.A. are not entitled for the reliefs sought for and this O.A. is only to be dismissed. Accordingly we dismiss the Original Application leaving the parties to bear their respective costs.

Dated the 2nd January, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER