

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NOs.734/2000 & 679/2000

Dated this the 22nd day of June 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S. Tampi, Member (A)

1. Karunanidhi Alagappan,
working as Fitter.

2. Smt.Saroja Karunanidhi,
working as Reja.

Both the applicants working
under the Assistant Engineer
(Consturction), Panvel.

...Applicants

By Advocate Shri M.S.Trivedi

vs.

1. The Union of India
through the General Manager,
Central Railway,
Headquarters Office,
Mumbai C.S.T., Mumbai.

2. The Deputy Chief Engineer
(Construction),
Central Railway,
Panvel.

3. The Assistant Engineer
(Construction),
Central Railway,
Panvel.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

As in both the cases the question of fact and law is one and the same, hence we proceeded to decide both the OAs. together.

2. These are the applications under Section 19 of the Administrative Tribunals Act, 1985 seeking the relief to quash and set aside the impugned order dated 11.7.2000 with a direction to allow the applicants to resume their duties with full back wages and continuity of service. Alternatively, the applicants have sought the relief for a direction to the respondents to furnish the documents referred to in the OA. with a liberty to the applicant to prefer an appeal against the order of penalty if any and the appellate authority be directed to pass a speaking order on an appeal of the applicant by considering all the points raised by the applicants.

3. Applicant Shri Karunanidhi Alagappan in OA.NO.734/2000 is the husband of the applicant in OA.NO.679/2000 Smt.S.Karunanidhi. The applicant in OA.NO.734/2000 was initially engaged as a casual fitter/Carpenter/Blacksmith on 11.6.1982 in the Construction Unit, Panvel. OA.NO.472/90 was filed by the applicant praying the relief for regularisation of his services on par with his juniors. The said OA. was decided vide order dated 6.4.2000 with a direction to the respondents to place the applicant immediately above Mohd.Moulana and grant him the benefits such as absorption, regularisation and pay arrears of salary from the date of Mohd. Moulana got the said benefits.

4. In the year 1994, the applicants (OA.Nos.734/2000 & 679/2000) were shifted to work at the Carnac Bunder near CST Station. As the applicants were staying at Jasai, near Panvel, the applicants had to travel by sub-urban local trains to reach to their place of work. On 7.5.1994 both the applicants boarded a sub-urban local train at Belapur at about 6.30 a.m. While boarding out from the train at CST Station, both fell down on their heads. There were no external injuries and they did not feel much pain in the head on that day. They performed their duties on the said day. After a period of 4-5 days, the applicant in OA.No.734/2000 felt extreme pain in his head. The parents of the applicant advised the applicant that the applicant should be taken to their native place for treatment and rest. The applicant applied for leave and passes for proceeding to native place w.e.f. 25.5.1994 which was sanctioned till 30.5.1994 and Passes were issued. The applicant was therefore taken to his native place at Pasar in Tamil Nadu by his parents. The wife of the applicant, i.e. applicant in OA.No.679/2000 remained at Mumbai. The applicant in OA.NO.734/2000 was taken to the Government Hospital at Mangalore. He was treated there and was informed that he had suffered major internal head injuries and therefore he was hospitalised. The condition of the applicant became worse. The wife of the applicant also reached there in August, 1994 after duly sanctioned leave and issue of passes. She also became mentally depressed and was admitted in the hospital. They were treated by the Medical Officers as

indoor and outdoor patients. It is alleged that the Doctors had informed about his illness (K.Alagappan) to the Divisional Medical Officer, Panvel. As they became fit to resume their duties on 1.7.2000, they submitted the Medical Certificate along with a request for resuming duties. A representation dated 3.7.2000 followed by a further representation dated 10.7.2000 was submitted by the applicants. The Respondent No. 2 passed order dated 11.7.2000 on the representation that "Representation submitted by you is not found satisfactory hence regretted. Decision taken by disciplinary authority (AEN(C)PNVL) is confirmed and upheld".

5. An exparte enquiry is said to have been conducted by the respondents and it appears that they have been terminated with an order of dismissal or removal from service of the applicants.

6. The applicant in OA.NO.734/2000 alleged that he was never served with the chargesheet, enquiry report, and order of disciplinary authority as such an enquiry which is not conducted in accordance with the principles of natural justice, the applicant continues in service.

The applicant in OA.NO.679/2000 states that though she received the chargesheet and enquiry officer's report, she could not understand the things. Copy of the order of the disciplinary authority was not served on her. Hence, both the applicants prayed for the reliefs as stated above.

7. The respondents have pleaded that applicants remained unauthorisedly absent for a prolonged period. Hence, after following due procedure they were removed from service w.e.f. 29.9.1998. Hence, the question of taking them on duty in the year 2000 does not arise at all. The present applications suffer from delay and laches. In OA.NO.734/2000 the respondents have denied receipt of any intimation regarding applicant's illness. The request of the applicants cannot be accepted for resuming on their duties as they ceased to be Railway servant. The applicants have not followed the Medical Rules. The respondents, filed additional written statement along with copy of the documents, i.e. chargesheet, acknowledgement, Order of appointing enquiry officer, intimation regarding date of enquiry, removal order, etc.

8. It is necessary to mention that as the applicants have not availed ^{themselves of} the remedy of appeal in respect of their removal order, we restrain ourself to examine the merits of DAR proceedings and the penalty order passed in respect of the same.

9. Till the order passed in the D.A.R. proceedings remains operative, we do not find any fault in respondents' order in coming to a conclusion in not allowing the applicants to resume their duties. It is for the applicants to take a decision to prefer an appeal against the order of the penalty.

There is no necessity to order the respondents to provide further documents to the applicants. However, it is made clear that if the applicants desire to have any documents, then they can apply to the respondents and respondents shall furnish the said documents to the applicants as per the rules.

10. In the result, both the OAs. are disposed of with the observation that till the penalty order dated 29.9.1998 stands, order dated 11.7.2000 need not to be interferred. The applicants are free to prefer an appeal as per law, if an appeal is preferred by the applicants, the respondents shall take the decision in accordance with law. With the above observations, the OAs. stand disposed of. No order as to costs.

(GOVINDAN S. TAMPI)

MEMBER (A)

(S.L.JAIN)

MEMBER (J)

mrj.