

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

DATED THE FOURTH JUNE, 1987

Present:

Hon'ble Mr Justice K.S. Puttaswamy .. Vice Chairman

Hon'ble Mr P. Srinivasan .. Member(A)

APPLICATION NO. 1044/86

M.L. David,  
LTI-62, Lorry Driver,  
Mangalore--Hassan Railway,  
Office of the Executive Engineer/  
Construction, Southern Railway,  
Sakaleshpur, Hassan District. .... Applicant

(M.S. Ananda Ramu .... Advocate)

Vs

1. The Union of India, represented by the Secretary to the Govt., of India, Ministry of Railways, 'Rail Bhavan', New Delhi.
2. The General Manager, Southern Railway, Park Town, Madras.
3. The Chief Engineer, Construction, Southern Railway, No. 18, Millers Road Bangalore 46.
4. The Divisional Railway Manager, Southern Railway, Mysore Division, Mysore.
5. The Executive Engineer, Construction, Hassan--Mangalore Railway Project, Sakaleshpur, Hassan District. .... Respondents

(Shri A.N. Venugopal .... Advocate)

This application came up for hearing today.

Member(A) made the following:-

O R D E R

This is a transferred application received from the High Court of Karnataka. In this application the applicant wants us to quash memo dated 25.12.82



...2/-

: 2 :

issued to him by the Executive Engineer Construction, Sakaleshpur('EE') and another memo dated 6.12.1983 issued to him by the same EE. By the first memo the applicant and another person were informed that their names had been deleted from the 'empanelled list' and would not be considered for further empanelment in future. By the second memo, the applicant was given one month's notice of termination of his services: in this memo the applicant was also offered alternative employment as Khalasi in the scale of Rs. 160-232 which he was required to accept not later than 15.12.1983. The applicant did not accept the alternative post offered to him in the second mentioned memo dated 6.12.83 and consequently he has been out of employment since then.

2. The applicant joined the Southern Railway on casual employment as a Khalasi on 11.2.1969. As he continued in employment for more than six months he was thereafter given temporary status and regular pay in the scale of Khalasi. He was promoted as a Special Mate in 1972. As he was only a temporary employee his services were terminated with effect from 16.7.1973 but he was again taken back into temporary employment soon after. For the second time his services were again terminated on 17.6.1974. On both these occasions, when his services were terminated, he was paid retrenchment compensation of Rs. 330/- and Rs. 468.75p respectively. After 17.6.1974, he was again taken back on duty on 19.9.1974 as a temporary Khalasi and appointed as a Lorry Attender. In November, 1982

*P. S. S. S.*

.....3/-

the EE(Respondent 5) informed the applicant that he had been empanelled for regular employment and that as a pre-condition to such appointment he would have to repay the retrenchment compensation paid to him on the two earlier occasions. But the applicant did not repay the said retrenchment compensation and therefore by letter dated 25.12.82, R5 informed the applicant that his name had been deleted from the empanelled list (Annexure E). This was followed up by letter dated 6.12.1983(Annexure F) whereby the applicant was given a month's notice terminating his services in terms of clause (c) of Section 25(F) of the Industrial Disputes Act 1947. Annexures E & F are under challenge in this application.

3. Shri M.S.Ananda Ramu, learned counsel for the applicant pleaded that the respondents were not right in terminating the services of the applicant after he had worked with the Railways for a total period of 13 years and more. Persons junior to the applicant had been given regular employment and his seniors had been given regular employment without calling upon them to repay the retrenchment compensation given to them earlier. According to Shri Ananda Ramu, therefore, the termination of the services of the applicant was violative of Articles 14 & 16 of the Constitution and represented unfair labour practice.

4. Shri A.N.Venugopal, appearing for the respondents, refuted the contentions of Shri Ananda Ramu. He reiterated what has been stated in the reply of the respondents that persons senior to the applicant were duly absorbed after empanelment as they fulfilled

*P. S. Venugopal*

....4/-

all the conditions for such absorption i.e. having paid back the retrenchment compensation, if any, given to them earlier. Similarly, persons who were junior to the applicant were also absorbed because in their cases there was no such liability i.e. no retrenchment compensation had been paid to them in the past. It was the applicant's fault that he declined to repay the retrenchment compensation given to him and that is why he lost the opportunity of regular employment.

5. We have considered the rival contentions very carefully. We are satisfied that though the applicant was empanelled for regular employment he was not given such employment only because he did not fulfill the pre-condition of such empanelment and appointment. The respondents specifically informed the applicant that his past service before he was retrenched on both occasions had been taken into account for empanelment and that was why he was required to repay the retrenchment compensation already given to him. The effect of counting such past service was to treat him as having been in service from the beginning without having been retrenched and therefore it was natural for the respondents to ask the applicant to repay the retrenchment compensation before he could be absorbed in regular employment. There is nothing unfair in this pre-condition and nothing which can be considered as unfair labour practice. Beyond asserting that others have been given regular employment without calling

P. S. — 45

upon them to repay the retrenchment compensation, Shri Ananda Ramu was not able to cite any specific instance where such preferential treatment had been given. On the other hand, Shri Venugopal categorically denied that any person who had already been given retrenchment compensation had been absorbed in regular employment thereafter without recovering the retrenchment compensation. We have no reason to disbelieve the statement of Shri Venugopal. This being so, we feel that it <sup>was</sup> only ~~was~~ because of the applicant's failure to fulfil a necessary pre-condition that he was not given regular employment. Therefore he was continued as a temporary employee and when his services were not any longer required, a notice of termination as required by clause(c) of Section 25(f) of the Industrial Disputes Act 1947 was issued to him on 6.12.1983 (Annexure F). Having said so much, we must notice that the applicant has been working with the respondents from 1969. He seems to have been misguided when he declined to repay the retrenchment compensation on his empanelment. We, therefore, feel that he should be given one more opportunity to repay the retrenchment compensation awarded to him earlier and, if he does so, his empanelment should be revived and he should be given a regular post. The applicant will repay the retrenchment compensation received by him in 1973 and 1974 within a period of 45 days from the date of this order. Within one month of such repayment, the respondents will take him back on the panel and offer him an appropriate posting. If the applicant does not repay the retrenchment compensation already received within

P. J. - 4

.....6/-

45 days of the date of this order, he will lose his right for empanelment, and consequent appointment. We would also make it clear that in the event of the applicant repaying the retrenchment compensation and being appointed thereafter he will not be entitled to any back wages till the date of such reinstatement, because, he declined the alternative employment offered to him in December, 1983. The period between his earlier empanelment and reinstatement in accordance with this order may be treated as leave without pay and will count for all other purposes like seniority, increment, promotion etc.

6. In the result, the application is allowed to the extent indicated above. Parties to bear their own costs.

7. This order will be communicated to the parties within a period of 10 days from this date.

sr

*As. R. ...*  
VICE CHAIRMAN  
4/6/87

*P. S. ...*  
MEMBER(A) 4/6/87



CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

APPLICATION No. 1044/86(T)

(WP.NO. 23155/83 )

COMMERCIAL COMPLEX, (BDA)  
INDIRANAGAR,  
BANGALORE-560 038.

DATED: 12-6-87

APPLICANT

Vs

RESPONDENTS

Shri M.L. David

The Secy, M/o Railways and 4 Ors

TO

1. Shri M.L. David  
LTI-62, Lorry Driver  
Mangalore - Hassan Railway  
Office of the Executive Engineer  
(Construction)  
Southern Railway  
Sakaleshpur  
Hassan District

2. Shri M.S. Ananda Ramu  
Advocate  
128, Cubbonpet Main Road  
Bangalore - 560 002

3. The Secretary  
Ministry of Railways  
Rail Bhavan  
New Delhi - 110 001

4. The General Manager  
Southern Railway  
Park Town  
Madras - 600 003

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE  
BENCH IN APPLICATION NO. 1044/86(T)

....

Please find enclosed herewith the copy of the Order  
passed by this Tribunal in the above said Application on

4-6-87

ENCL: As above.

DEPUTY REGISTRAR  
(JUDICIAL)

*Received 2 copies  
S.no. 1 and 2  
on 12/6/87  
By your name  
Advocate for  
Applicant*

*Received  
16/6/87*

*CR  
Recd  
12/6/87*

*0/c*

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Sd/-  
VICE CHAIRMAN

4/6/87

Sd/-  
MEMBER(A)

4/6/87

- True copy -

*[Signature]*  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE