

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
*****Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 2-11-87

APPLICATION NO 1697 /86 (F)

W.P.No. _____

APPLICANT

Vs

RESPONDENTSShri B. Hameed Kunju
To

The Secy, M/o Railways & S ors

1. Shri B. Hameed Kunju
128, Cubbonpet Main Road
Bangalore - 5600022. Shri M.S. Ananda Ramu
Advocate
128, Cubbonpet Main Road
Bangalore - 560002.3. The Secretary
Ministry of Railways
Rail Bhavan
New Delhi - 1100014. The General Manager
Southern Railway
Park Town
Madras- 25. The Divisional personnel
officerDivisional office
Personnel Branch
Southern Railway
Bangalore city6. Shri Bala Sundaram
Trolleyman
Divisional personnel
BranchSouthern Railway
Bangalore7. Shri K. Laxman chari
Gangman
Divisional office
Personnel Branch
Southern Railway
BangaloreSubject: SENDING COPIES OF ORDER PASSED BY THE BENCHPlease find enclosed herewith the copy of ORDER/~~STAY~~/
INTERIM ORDER passed by this Tribunal in the above said application
on 28-10-87.

RECEIVED 7 copies 3/11/87

Diary No. 1371/CR/2

Issued Date: 6/11/87

Encl: as above.

8. Shri M. Sreerangaraj
Railway Advocate

128, Cubbonpet

3, SP Bldg,

1015 cross

Bangalore - 560002

Section officer
(JUDICIAL)B. Hameed Kunju
2-11-87
APPLICANT

DATED THIS THE 28th OCTOBER, 1987

Present : Hon'ble Sri L.H.A. Rego - Member (A)
Hon'ble Sri Ch. Ramakrishna Rao - Member (J)

APPLICATION No.1697/86

B.Hameed Kunju
Gangman, Divisional Office
Personnel Branch, SBC/PWD,
Southern Railway, Bangalore City
residing at No.128, Cubbonpet Main Road,
Bangalore 560 002

- Applicant

(By Sri M.S. Amanda Ramu, Advocate)

vs.

1. The Union of India represented by its
Secretary to Government, Ministry of
Railways, Rail Bhawan
New Delhi
2. The General Manager,
Southern Railway,
Park Town, Madras
3. The Divisional Personnel Officer,
Divisional Office, Personnel Branch
Southern Railway, SBC
Bangalore City.
4. Balasundaram,
Trolleyman, Divisional Personnel Branch,
Southern Railway, Bangalore
5. K. Laxmanichari
Gangman, Divisional Office
Personnel Branch, Southern Railway
Bangalore

(By Sri M. Sreerangaiah, Advocate - for Respondents 1 to 3)

This application came up for hearing before
this Tribunal and Hon'ble Sri Ch. Ramakrishna Rao,
Member (J) to-day made the following

O R D E R

This is an application filed under Section 19
of the Administrative Tribunals Act, 1985.

2. The facts giving rise to the application are,
briefly, as follows: The applicant was engaged initially
as a casual labourer. After he became eligible,

the applicant was empanelled and absorbed as a temporary Gangman on Rs.200/- in scale of Rs.200-250 in Bangalore Division. He joined the said post on 20.5.82 under Permanent Way Inspector, ('PWI') Kolar. Thereafter he was transferred to work under PWI, Bangalore at his request. While he was working as a temporary Gangman in Bangalore, the applicant went on transfer at his own request to the Construction unit/Hindupur as a Lascar in scale Rs.196-232 and joined the said post on 27.10.82. While he was working as a Lascar under the control of the Executive Engineer, Hindupur, the Chief Engineer, Construction, Bangalore promoted the applicant on 1.9.83 as a Driver in the scale Rs.260-400 on ad hoc basis, and posted him to work under the control of the Executive Engineer, Doubling, Guntkal. It was clearly stated in the order dated 1.9.83 that the promotion of the applicant as a Driver was purely temporary and on ad hoc basis and that it did not confer on him any claim for continuance or future promotion or seniority over his seniors. His promotion took effect from 20.9.83. Later, since the applicant was rendered surplus as a Driver, he was repatriated to his parent unit viz., Open Line by order dated 28.7.1986 issued by the Chief Engineer (Construction), Bangalore. Aggrieved, the applicant has filed this application.

3. Sri M.S. Ananda Ramu, learned counsel for the applicant, strenuously contends that his client discharged the duties of a driver to the satisfaction of the respondents^{1 to 3} in as much as no adverse remarks were communicated to him during the period he held the post of Driver;

that without assigning any reason, his client was demoted from the post of Driver to that of Gangman by order dated 28.7.1986; that the said order partakes the characteristics of an order of reversion which was passed without affording to his client an opportunity to represent or be heard and is, therefore, liable to be struck down.

4. Sri M. Sreerangaiah, learned counsel for ^{the} respondents vehemently refutes the contention of Sri Ananda Ramu and submits that it was clearly stated in the Office Order dated 1.9.1983 promoting the applicant as Driver that he was being promoted on adhoc basis for a period of three months and posted against one of the posts of drivers in the scale Rs.260-400 (RS) created under XEN/DL/GTL, subject to ^{selected} his being ~~is~~ replaced by any one in regular channel whichever was earlier. According to Sri Sreerangaiah, five drivers were working under the Executive Engineer (Doubling) Guntkal out of whom three were retained and two were rendered surplus for want of work and the applicant was one of the two and as such repatriation of the applicant to his original post as Gangman in Bangalore is not illegal.

5. We have considered the rival contentions carefully. In our view the language and tenor of the order dated 1.9.83 appointing the applicant as Driver leaves no doubt that the appointment was purely on adhoc basis. It does not, therefore, confer any right on him to hold the post on regular basis. We, therefore, see no reason to interfere with the order dated 1.9.1983.

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6. Sri Ananda Ramu next contends that the 4th and 5th respondents (R4 & R5) who were junior to the applicant were promoted on ad hoc basis on 12.11.86 and 18.11.86 respectively to the post of Driver ~~■~~ after his client was discharged from the post of Driver on 28.7.86. This falsifies the reason advanced by Respondents 1 to 3 that his client was discharged since two posts of Drivers were rendered surplus. Sri Ananda Ramu also submits that though reverted to the post of Gangman, his client has been discharging the duties of Driver and in support of his submission he has filed copies of the muster rolls for the relevant period. In view of this Sri Ananda Ramu pleads that his client should be given the same pay to which a Driver is entitled ~~to~~ on the principle of 'equal pay for equal work'.

7. Sri M. Sreerangaiah counters the submission of Sri Ananda Ramu on the ground that at the time of discharging the applicant from the post of Driver, 3 drivers who were selected on regular basis were retained while two others, of whom the applicant was one, who were working on ad hoc basis were repatriated to the original post held by them. According to Sri Sreerangaiah when the need arose in November 1986 to take two more drivers on ad hoc basis R4 & R5 were selected; that it is open to R1 to R3 to utilise the services of the applicant in the manner considered best and the principle of 'equal pay for equal work' has not been violated.

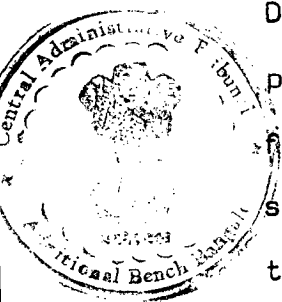
8. We have considered the rival contentions carefully. We are of the view that in cases such

as the present, where the applicant, who was working as Driver for about three years, is repatriated to his original post of Gangman, it is impermissible to utilise his services as a Driver after his repatriation, which was effected on the ostensible ground of want of vacancies in the post of driver. In other words, the post of Peon cannot be converted virtually into a post of Driver without giving the incumbent^b thereof the emoluments, which a driver is normally entitled to. We have no hesitation in holding that the nature of the duties performed is the determining factor but not the designation. We are satisfied on a perusal of the photostat copies of the muster rolls, which were also shown to Sri Sreerangaiah, that the applicant was actually performing the duties of driver while working at Dharmapuri (Bangalore Division) of Southern Railway and as such he is entitled to the emoluments payable to a driver.

9. We, therefore, direct the respondents to pay the applicant the difference between the salary payable to a Driver and the salary of a Gangman, which has already been paid to the applicant, within a period of three months from the date of receipt of this order. The payment shall continue to be made as long as the applicant discharges the duties of a Driver.

10. In the view we have taken, we do not consider it necessary for the purpose of this application to determine the^{question of} seniority of the applicant vis-a-vis R4 & R5 regarding the promotion effected to the post of Driver on ad hoc or regular basis.

11. The application is disposed of, subject to the direction given above. No order as to costs.



True Copy.

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd/-
(Ch. Ramakrishna Rao)
Member (J)

Sd/-
(L.H.A. Rego) 25.7.87
Member (A)