
(1979) 07 KL CK 0013
In the High Court Of Kerala

V.K. Narayanan

APPELLANT

Vs

Senior Divisional Engineer, Southern Railway and Others

RESPONDENT

Date of Decision : 30-07-1979

Acts Referred:

Citation : (1980) 1 ILR (Ker) 555 : (1980) 2 LLJ 265

Hon'ble Judges : K. Bhaskaran, J

Bench : Single Bench

Judgement

K. Bhaskaran, J.—The petitioner, Sri V.K. Narayanan, Gangman, Gang No. 6, Southern Railway, Trichur, having at that time 17 years of service, was served with Memorandum No. J/P. 510/IX/SRR, dated 28-4-1977, a true copy of which is - Ext. P1, by the 1st respondent, the Senior Divisional Engineer, Southern Railway, Olavakkot, wherein in paragraph 3, it is stated as follows:

3. Sri V.K. Narayanan, Gangman/TCR under PW1/TCR who was discharged from sick list from 6-4-77 as unfitted by DMO/OJA in Class B1 to B2 but fit in Class C1 and C2 only vide his letter No. G/MD- 84/11 of 7-4-77, is granted EXL from 6-4-77 to 5-10-77 (6 months) or till he is offered alternative appointment whichever is earlier.

Thereafter the petitioner made a representation dated 4-5-1977, a true copy of which is Ext. P2, requesting the 2nd respondent, the Senior Divisional Personnel Officer, Southern Railway, Olavakkot, to find a suitable alternative employment for him. Ext. P3 is the copy of Memorandum No. J/P. 510/IX/SRR dated 13-10-1977 issued by the 2nd respondent informing the petitioner that, as no alternative suitable appointment could be provided to him, his service was terminated on the expiry of the sanctioned EXL. It is this order which is under challenge in this writ petition.

2. In paragraphs 2 and 3 of the counter affidavit sworn to by the 2nd respondent, on behalf of the 1st respondent also, events leading to the issue of Ext. P3 order have been traced; therein it is stated, inter alia, that the

respondents had made earnest efforts to find a suitable alternative employment for the petitioner; as a matter of fact the petitioner had also appeared, along with others, before the screening committee for the selection to the post of watchman/lascar/peon in pursuance of 2nd respondent's notice, a copy of which is Ext. P1; but the petitioner was not found suitable for appointment to any of those posts. It is also averred that at the time when the petitioner was found medically unfit in his post on 6-4-1977, he had only 13 days' half-pay leave to his credit which expired on 18-4-1977; thereafter he was given a further period of six months' extraordinary leave from 18-4-1977 to 17-10-1977 without salary; on the expiry of the extraordinary leave granted for six months, the service of the partially incapacitated persons would stand terminated automatically even without a specific order in that behalf; there is no provision to grant extraordinary leave beyond six months under any circumstance; and, therefore, in any case, the petitioner would have to be deemed to be out of service on the expiry of six months' extraordinary leave on 18-10-1977.

3. Sri M.M. Cheriyan, the counsel for the petitioner, submitted that by virtue of the provisions contained in Chapter XXVI of the Railway Establishment Manual, hereinafter referred to as the Manual, the respondents had a duty to find suitable alternative employment for absorption of decategorised personnel, like the petitioner, medically incapacitated for further service in the post he was holding, but declared eligible for retention in service in posts corresponding to the lower medical category in which he has been placed.

4. Paragraph 2601 of Chapter XXVI of the Manual lays down that a railway servant who fails in a vision test or otherwise becomes physically incapable of performing the duties of the post which he occupies should not be discharged forthwith, but every endeavour should be made to find alternative employment for him as expeditiously as possible; such employment must be of suitable nature and on reasonable emoluments having regard to the emoluments previously drawn by the railway servant.

5. Paragraph 2602 deals with the classification of railways servants declared medically unfit, and it reads as follows:

Railway servants declared medically unfit for further service are divisible into two groups:

- (i) Those completely incapacitated for further service in any post on the railway, i.e., those who cannot be declared fit even in the "C" medical category;
- (ii) Those incapacitated for further service in the post they are holding but declared fit in a lower medical category and eligible for retention in service in posts corresponding to this lower medical category.

6. The provisions contained in paragraph 2603 of the Manual dealing with railway servant totally incapacitated for further service may not have any direct application to the facts of the present case. Clauses (a) and (b) of paragraph

2604 deal respectively with permanent railway servants and temporary railway servants incapacitated for service in posts held by them. Clause (a) being the one having direct bearing to the facts involved in this case, is extracted below:

(a) Permanent Railway servants : A permanent in group (ii) of para 2602 must also cease to perform the duties of the post, he was holding from the date he is declared medically unfit. Here again, no officer has the authority to permit him to perform his duties in that post beyond that date. He should be granted leave as admissible to him, under the leave Rules by which he is governed, from the date he is incapacitated subject to the proviso that where the railway servant has not got six months leave to his credit his leave shall be made upto six months by the grant of extraordinary leave. If an alternative employment cannot be found for such a person within the period of leave so granted his service should, be extended by grant of extraordinary leave, subject to the condition that the total amount of extraordinary leave to be granted to the railway servant does not exceed six months. It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption. If the railway servant is absorbed against a temporary posting a permanent cadre a supernumerary post may also be created and his lien counted against that post. It should, however, be noted that--

(i) the actual creation of a supernumerary post will follow the acceptance of offer of alternative posts:

and

(ii) the supernumerary post should be abolished as soon as a permanent post is found for the railway servant concerned.

Note 1 to the above clause is in the nature of an explanation in regard to the need for granting leave to the decategorised person awaiting absorption in a post suitable to him in order to ensure continuity of his service. Paragraph 2605 lays down that alternative employment must be found in the case of permanent and temporary railway servants. It is in the following terms:

Medically decategorised staff may, as far as possible, be absorbed in such alternative posts which should broadly be in allied categories and where their background and experience in earlier posts could be utilised. There should be no difficulty in providing such alternative employment and no reversion of any officiating railway servant for the purpose of absorbing the disabled railway servant should be necessary. For this purpose attempts should be made to absorb the disabled railway servant not only within the District/Division or Department but in another District/Division or Department.

Paragraph 2606 deals with steps to be taken for finding alternative employment; Clauses (i) to (8) thereof give detailed guidelines for the constitution of a committee for determining the categories in which the medically incapacitated railway servant is suitable for absorption, the preparation of the list of vacancies,

maintenance of a register of railway servants eligible for appointment to alternative posts, responsibility of the officer under whom the railway servant was directly serving to find suitable alternative employment for him, the steps to be taken in that behalf, the nature of the post to which such railway servant is to be appointed, etc.

7. Paragraph 2607 provides that if and when a railway servant is absorbed in an alternative post, intimation will be sent by the officer, under whom he was previously serving, to all other officers to whom his name was notified. Paragraph 2608 is to the effect that before any post is filled or a promotion is ordered, officers concerned will refer to the registers and satisfy themselves that no medically incapacitated railway servant who is suitable for the post is available. Paragraph 2609 lays down that the alternative post to be offered to a railway servant should be the best available for which he is suited, to ensure that the loss in emoluments is a minimum. This paragraph also gives the guidelines as to how the suitability of the employment has to be decided. Paragraph 2610 lays down that the offer of alternative employment must be made in writing, stating the scale of pay and the rate of pay at which it is proposed to re-absorb him in service. It also states that on no account should the railway servant be posted to an alternative appointment until he has accepted the post. It further provides that a railway servant is at liberty to refuse an offer of alternative appointment, and the leave granted to him will not be terminated prematurely merely because of his refusal; the leave must run its course; he will continue to remain eligible for other alternative offers of appointment till his leave expires; and efforts to find such appointments should, therefore, continue throughout the currency of his leave. Paragraph 2611 is to the effect that as soon as a railway servant has accepted the alternative employment offered to him and has been appointed thereto, the balance of the leave granted to him will be cancelled, and only the leave actually availed of will be debited to his leave account. Paragraph 2612 provides that past service has to be treated as continuous service; and paragraphs 2613 and 2614 deal with fixation of pay and seniority respectively. Paragraph 2615 lays down as follows:

The Railway servant is to be retired if one or more alternative employments are not accepted.

A railway servant who refused to accept one or more offers of alternative appointment will retire finally on the expiry of leave granted to him as stated in paragraph 2604 and should be paid all his dues forthwith.

8. In this case an element of confusion appears to have crept in into the minds of the officers charged with the responsibility of finding suitable alternative employment for the decategorised employee found not suitable for continuing in the post held by him, but declared fit for service in other posts corresponding to the lower medical category in which he has been placed. The cause of the confusion could probably be traced, to some extent, to the vagueness surrounding the provisions contained in Clause (a) of paragraph 2604 of the

Manual. The respondents appear to have understood the provision as laying down that every effort should be made by them to find an alternative employment for the medically incapacitated person; and if they do not succeed in finding one before the expiry of the EXL leave, the period of which in the aggregate cannot exceed six months, it necessarily and automatically results in the termination of the service of the decategorised employee.

9. On a careful consideration of the scheme of the Chapter, with particular reference to the provisions contained in Clause (a) of paragraph 2604, I am of the view that the approach to the problem made by the respondents is not in consonance with the true spirit of the relevant provisions. Let us notice some of the basic features of Clause (a) paragraph 2604; (a) a permanent employee placed in Group (ii) of paragraph 2602 must cease to perform the duties of the post, he was holding from the date he is declared medically unfit; (b) he should be granted leave as admissible to him under the relevant rules, and when he has not got six months' leave to his credit, his leave shall be made up to six months by the grant of extra ordinary leave; (c) his service should be extended by the grant of extension of extra ordinary leave subject to the condition that the total amount of extraordinary leave granted to him does not exceed six months, if an alternative employment cannot be found for him within the period of leave granted as above; (d) it should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption; and (e) if he is to be absorbed against a temporary post in a permanent cadre, a supernumerary post may also be created and his leave counted against that post.

10. The enabling provision for extending service by the grant of extension of extraordinary leave is with the definite object of finding a suitable alternative employment for the employee concerned before the expiry of the extended leave. No provision in regard to the steps to be taken if no suitable alternative employment could be found before the expiry of the extended leave is contained in the Chapter precisely for the reason that it is expected that a place should and could be found for him before the expiry of that period. In this connection the significance and relevance of the sentence "It should be possible within the period of leave thus extended to find either a permanent or a temporary post for his absorption" in paragraph 2604 should not escape our notice. If we miss that, we miss the soul of the provision. It is not open to the officers who are responsible for finding suitable alternative employment for the decategorised personnel to plead that their best efforts did not yield the desired result till the expiry of the extended leave. It has to be noticed that after all, the petitioner was not found completely incapacitated for further service in a post in the Railway. When he is placed in Group (ii) of paragraph 2602, the definite finding of the medical officer or the Board is that he is suitable, and, therefore, eligible for retention in service, in posts corresponding to the category in which he has been placed, though unfit for continuing in service in the post he was till then holding. The provision for absorption of the incapacitated employee against temporary post even at the cost of creating a supernumerary post for continuing

his lien indicates that somehow a post to ensure the continuity of his service should be found before the expiry of the extended leave. In fact paragraph 2605 amplifies the position further when it states:

?There should be no difficulty in providing such alternative employment and no reversion of any officiating railway servant for the purpose of absorbing the disabled railway servant should be necessary. For this purpose attempts should be made to absorb the disabled railway servant not only within the District/Division or Department but in another District/Division or Department.

The guidelines in paragraph 2606 given to the officers concerned with respect to steps to be taken for finding suitable alternative employment for the decategorised personnel also give some insight into the central idea of the provisions. The contingency of retiring the railway servant would arise only if one or more alternative employments offered are not accepted; and in that case the procedure laid down in paragraph 2615 has to be followed. The task of the screening committee or other officers charged with the duty of finding alternative employment is to determine the post to which the employee would fit in. This position is abundantly clear from the first sentence in Clause (1) of paragraph 2606 which is to the effect that "With a view to determine the categories in which a medically incapacitated railway servant is suitable for absorption, a Committee should examine him." It is not as though their responsibility ends with testing the suitability of the employee with reference to a particular post and recording a finding that he is not suitable for that post, as is stated to have been done in the instant case. The emphasis, on the other hand, should have been on efforts to find a post for which he is suited.

11. Sri M.M. Cheriyan submitted that the Railway Board has itself in its Circular No. (N.C.) 11-70 RE. 3-4 dated 3-11-1971 clarified the position that--

Where it is not possible to find a suitable alternative permanent post or even a suitable temporary post (Convertible as a supernumerary post) within the period of leave, permanent railway servants may be absorbed against temporary post for which they are considered suitable within the period of leave, as an interim measure

(Emphasis supplied)

The necessity for absorption of the decategorised railway servants in appropriate cases in temporary posts as an interim measure might have certainly been in the contemplation of the Railway Board even otherwise, as that appear to be implied in the provisions of the Chapter, particularly in paragraphs 2604 to 2606 thereof.

12. In the light of the foregoing discussion Ext. P3 order terminating the service of the petitioner on the expiry of the sanctioned EXL leave, passed by the 2nd respondent cannot be sustained, as it is in violation of the spirit of the relevant provisions contained in Chapter XXVI of the Manual. The service of the petitioner who falls in Group (ii) of paragraph 2602 and who is found eligible for retention

in service in a post corresponding to the lower category in which he is placed on decategorisation ought not to have been terminated without satisfying the conditions stated in paragraph 2615 and without following the procedure laid down therein. As Ext. P3 order cannot be given effect to, it is quashed; and it is also declared that the petitioner shall be deemed to be continuing in service. The respondents shall offer to the petitioner for his acceptance suitable alternative employment as early as possible, and will not terminate his service unless the conditions mentioned in paragraph 2615 are satisfied and the procedures laid down therein are followed. The writ petition is allowed as above. There will be no order as to costs.