

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA 2609/1999

New Delhi this the 2nd day of July, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J)  
Hon'ble Shri Govindan S. Tampi, Member (A)

1. Pitambar  
S/O Shri Sant Ram
2. Pooran,  
S/O Shri Ram Lal
3. Nambley,  
S/O Shri Ram Singh
4. Ram Prasad,  
S/O Shri Mangli
5. Vijaypal  
S/O Shri Bahadur Singh
6. Radhey Sham,  
S/O Shri Ram Bharosy
7. Chhokhey  
S/O Shri Matroo
8. Gaj Ram S/O Sh. Munshi
9. Bharat S/O Sh. Baboo Ram
10. Subhash Chandra  
S/O Shri Ram Kumar
11. Dev Kinandan S/O Prem
12. Ram Avttar  
S/O Shri Basanti
13. Siaram  
S/O Shri Shankar Lal
14. Lakhan  
S/O Shri Nekashi
15. Budh Sen  
S/O Shri Yad Ram
16. Tara Shankar  
S/O Shri Sitaram
17. Sukhan  
S/O Shi Mazeed
18. Asharfi  
S/O Shri Shamlal
19. Parkash  
S/O Shri Munshi

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20. Sohan Pal  
S/O Yad Ram

21. Vimlal  
W/O Gayadeen

22. Mohan  
S/O Shri Tikaram

23. Hari Om  
S/O Brijlal

(all of them working as Khalasi/  
Helper Khalasi under Section  
Engineer (W), Northern Railway,  
Chandausi )

..Applicants

(By Advocate Shri B.S. Mainee )

VERSUS

1. The General Manager,  
Northern Railway,  
New Delhi.

2. The Divisional Superintending  
Engineer(G), Northern Railway,  
Moradabad.

3. The Assistant Engineer,  
Northern Railway,  
Chandausi.

..Respondents

(By Advocate Shri R.L. Dhawan )

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicants are aggrieved by the impugned order issued by Respondent No.2 dated 17.11.1999. In this order, it is mentioned that as per the decision taken in Man Power Planning (MPP) meeting at G.M's level on 19.8.1999, issued vide letter dated 7.5.1999 and MPP meeting at DRM's level on 17.9.1999, staff as per the list attached, who have been rendered surplus have been merged against the supernumerary posts, redeployed and posted as per Annexure-1/1 to 1/5.

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2. The main contention of Shri B.S.Mainee, learned counsel for the applicant is that the aforesaid impugned order has been issued arbitrarily by the respondents by which they have transferred the applicants from the posts of Khalasis to the posts of Gangmen. He has submitted that the name of Applicant No.1 Shri Pitambar is at Serial No.29 of the impugned Annexure -1/1 list of Khalasis who have been redeployed as Gangmen along with other applicants. He has submitted that Gangmen are placed in a separate cadre and have their own channel of promotion, like Key Man, Mate, P.W.Mistry.etc. whereas the applicants who have been promoted in semi-skilled posts of Helper Khalasis are eligible for the posts of Artisans like Masons, Carpenters, Painter etc. Learned counsel for the applicants has very vehemently submitted that the applicants cannot be transferred to another cadre, namely, that of Gangmen and hence, they have impugned the validity of the order dated 17.11.1999. He has also submitted that the contention of the respondents that they have been rendered surplus is incorrect because they are not the junior-most Khalasis who can, therefore, be rendered surplus and adjusted against other posts. They have relied on the judgement of the Tribunal in Bhup Narain and Ors. Vs. Union of India and Ors.( in which one of us, Smt.Lakshmi Swaminathan was also a Member) (OA 70/97) decided on 20.4.2000 (copy placed on record).

3. One other main contention of the learned counsel for the applicants is that, as the respondents have regularised juniors to the applicants as Khalasis, they cannot refuse to regularise them as Khalasis or declare them as surplus and change their cadre to that of Gangmen. It was very vehemently argued by Shri

B.S.Mainee, learned counsel, that the applicants are not the junior most persons who could have been rendered surplus, apart from the fact that the cadre of the applicants cannot be changed to that of Gangmen as they have never worked in that cadre, which is also against the relevant rules. He has also contended that several vacancies of Khalasis are there in the Moradabad Division and the applicants are prepared to be transferred to any place in the Division where vacancies of Khalasis exist but they are totally opposed to work as Gangmen, which is a different cadre to that of Khalasis.

4. The above facts were disputed by the learned counsel for the respondents. In the reply filed by the respondents, a preliminary objection has been taken that the Principal Bench of the Tribunal has no territorial jurisdiction to entertain the application. That contention had been considered and rejected by Tribunal's order dated 4.7.2000. Thereafter, by another order dated 28.2.2001, the OA was placed before the Division Bench where it has been heard at length.

5. The respondents have stated in their reply that the MPP had, in consideration of the measures required to utilise both skilled and unskilled employees as well as the need for modernisation and change in technologies etc., taken certain decisions regarding working in the Railways. They have submitted that the whole matter has been reviewed and it was found that the number of Khalasis in the Division/Sub-Division is more than the actual requirement as per the settled norms. Accordingly, during 1988 and 1999, 351 posts of Khalasis were declared surplus. Similarly, they have submitted that the number

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of Gangmen in the Division in Northern Railway is also much less than the actual requirement. Therefore, they have stated that the surplus Khalasis were to be redeployed as Gangmen, who fulfilled the medical classification in that cadre. In Paragraph 13 of the reply, they have submitted that only the junior most staff were declared surplus and none junior to the applicants were retained as Khalasis while declaring the applicants as surplus. They have also clarified that the applicants had been declared fit B-one Safety Medical Category, that is, the medical classification for Gangmen.

6. The above facts were hotly disputed by the learned counsel for the applicants who has very categorically stated that the applicants in the Q.A. are senior to the applicants in Bhup Narain's case (supra). It was also noticed in Paragraph 4.1 of the OA, that the applicants have stated that they were initially engaged under Inspector of Works(IOW), now designated as Section Engineer, Chandausi in the year 1977-78 and were screened, regularised and absorbed in various years from 1980 onwards as indicated in the Memo. of Parties as Khalasis/Helper Khalasis in Northern Railways, Chandausi. As we found the reply filed by the respondents vague on this point as they have merely stated that "the contents of this para are not denied to the extent the same are borne out by the records", they were directed to place on record the relevant documents with regard to these averments. The respondents have submitted the additional affidavit of the Divisional Engineer (G), Moradabad Division, Northern Railway, Moradabad, in which they have annexed Annexures R-5 and R-6. It is seen from this affidavit that the names of Shri Bhup Narain and Others who were regularised as Khalasis in compliance of the Tribunal's order dated 20.4.2000 are

given in the list at Annexure R-6. This list shows that they were regularised on 25.2.2001 as per letter No.E/6/Panel dated 24.2.2001 of ADEN/CH. It is relevant to note from this affidavit that the respondents themselves have admitted in Paragraph 5 that Shri Bhup Narain and Ors. were regularised as Khalasis after the dates of regularisation of the applicants but they were regularised as Khalasis only in compliance of the directions given in OA No.70/1997. It is further relevant to note that as per Annexure R-5 annexed to the additional affidavit filed by the respondents, which is the list of the applicants, who are only 23 in number whereas the list contains 24 numbers, they have stated in the remarks column that they have been regularised as Khalasis in the Panel years 1992,1993 and 1995. From the aforesaid documents annexed to the additional affidavit submitted by the respondents on 30.5.2001, it is seen that the applicants are not the junior most persons/Khalasis who could be rendered surplus and thereafter redeployed in another cadre. In Bhup Narain's case (supra), it was noted that the applicants in that case have been working for 10-12 years as Khalasis and they had been screened and declared fit in that category. They had impugned the order dated 21.12.1996 issued by the Assistant Engineer (G) Moradabad whereby their category was changed from Khalasis to Gangmen. After noting the facts and the relevant provisions of the rules/instructions, the OA was allowed and the impugned order was quashed and set aside with the directions to the respondents to regularise the applicants as Khalasis on which posts they have been found fit by the Screening Committee. If the applicants in the present OA have been regularised as Khalasis in 1992-95 and there are number of other persons who have been regularised in February, 2001 that is, applicants in OA 70/97, it appears that there would also be other Khalasis who might have been

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regularised between 1995 and 2001 who are also junior to the applicants. In this view of the matter, we find merit in the submissions made by Shri B.S. Mainee, learned counsel for the applicants that the respondents have not considered the relevant facts while declaring the staff as surplus as they ought to have taken the junior most among them. He has also contended that the statements given by the respondents in the latest affidavit are not correct to the effect that Shri Bhup Narain and Ors. have been regularised as Khalasis after the dates of regularisation of the applicants or that they were screened for regularisation in 1996-97 and were ordered to be switched over to the cadre when they filed OA 70/1997 in which they had obtained stay and the OA was finally allowed. The applicants have also submitted that their dates of regularisation have been wrongly shown in Annexure R-5 as 1992-1993 while the seniority list filed by the respondents shows the dates of appointment/regularisation as 1984-85. We had also noted in our order dated 16.4.2001 that the seniority list/impugned Office Order dated 17.11.1999 annexed to the additional reply filed by the respondents dated 2.6.2000 is not very clear. Annexure R-4 filed by the respondents appears to be the same list and that too without any further clarity.

7. In the facts and circumstances of the case, we find that the respondents have failed to place the relevant documents on record to show that the applicants were not the junior most Khalasis at the relevant time who could have been declared surplus. Hence the OA is allowed and the impugned Office Order dated 17.11.1999 is quashed and set aside, in so far as it pertains to the applicants, in changing their cadre from Khalasis and redeploying them as Gangmen. No order as to costs.

(Govindan S. Tampi )  
Member (A)

*Lakshmi Swaminathan*  
(Smt. Lakshmi Swaminathan )  
Vice Chairman (J)