

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 70/97

New Delhi this the 20th day of April 2000

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

1. Bhup Narain
S/o Shri Ram Prasad.

2. Raza Hussain
S/o Shri Chidan.

3. Mohd. Umar
S/o Shri Kedar Bux.

4. Shamim
S/o Shri Bashir.

5. Mahender
S/o Shri Ram Bir

6. Sohan Pal
S/o Shri Bal Kishan.

7. Amar Singh
S/o Shri B.Deo.

8. Baij Nath
S/o Shri Raghuvar Dayal.

9. Banwari
S/o Shri Sukhan.

10. Malkhan
S/o Shri Mewa Ram.

11. Babu Lal
S/o Shri Heti Lal

12. Ramesh
S/o Shri Baboo Ram.

13. Banwari
S/o Shri Sukhi.

14. Raj Bahadur
S/o Shri Jai Pal Singh

15. Panna Lal
S/o Shri Bhure.

16. Ravi Dutt
S/o Shri Ram Swaroop.

17. Shyam Singh
S/o Malu Singh.

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18. Tussi
S/o Shri Ganga Ram.

19. Chiranji
S/o Shri Hori.

20. Khayali
S/o Shri Dori. Applicants

All the 20 applicants working as Khallasi,
Inspector of Works, N.Rly., Chandausi.
(By Advocate : Sh. G.D. Bhandari)

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1. Union of India through
The General Manager,
N.Rly., Baroda House,
New Delhi.

2. Divisional Rly. Manager,
Northern Railway,
Moradabad.

3. The Asst. Engineer (G)
DRM's Office, N.Railway,
Moradabad.

4. The Asst. Engineer/DEN,
Northern Railway
Chandausi. Respondents
(By Advocate : Sh. R.L. Dhawan)

O R D E R (Oral)

BY MR. V.K. MAJOTRA, MEMBER (A)

The applicants have challenged order dated 20.12.96 Annexure A-1 issued by Asstt. Engineer (G) Moradabad, Respondent No.3 whereby the category of all the applicants has been challenged from Khallasi to Gangman, allegedly in violation of Respondents' circular dated 20.3.96, Annexure A-2. It is claimed that on the basis of screening conducted on 15/25-1-96 of Casual Labour, (Annexure A-2), the applicants have been declared fit for the post of Khallasi (grade Rs. 750-940) which post they have been holding for the last over 10-12 years as Casual Labour. The applicants were

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engaged as Casual Labour under the Inspector of Works, Chanduasi, Civil Engineering Department, in Moradabad Division of Northern Railway. They were granted the temporary status and given regular pay scales of the post of Khallasi in Grade Rs. 750-940. A total of 542 Casual Labours were subjected to formal screening by the Screening Committee on 15/25-1-96. The result thereof were declared by Annexure A-2, dated 20.3.96 whereby 459 Casual Labours were placed on a provisional panel of screened employees for regularisation on the posts shown against their names in the said panel. Vide Annexure A-1 dated 20.12.96, 459 persons, whose names were included in the select list, have been regularised as Gangman instead of as Khallasi. It has been contended by the applicants that when they have been actually working as Khallasi for a long number of years and were declared fit for the post of Khallasi in the screening test, it substantiates their legal right to be regularised as Khallasi. They have averred that the category and job responsibilities of the post of Gangman are entirely different than those of a Khallasi. It has been further stated that whereas the result of screening test was issued by the Establishment Branch under the signatures of APO(C), who is the competent authority, having jurisdiction of the matters of screening, regularisation, posting, change of category etc., respondent No.3 who is not a competent authority issued orders for regularisation of the applicants as Gangman instead of Khallasi. The applicants have also levelled

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allegation of ulterior motives and extraneous reasons for changing the categories of the applicants in regularising them. The applicants have claimed that they have to be absorbed on the same post on which they have been working for several years. The applicants have sought quashing of order dated 20.12.96 Annexure A-1 and direction to the respondents to regularise them on the basis of the result declared on 20.3.96 (Annexure A-2) on the post for which they have been found fit by the Screening Committee.

2. The respondents have stated in their counter that in terms of para 2006 of Indian Railway Establishment Manual Vol.II ('IREM' in short), absorption of casual labour in regular Group-D employment is not automatic but is subject inter alia to availability of vacancies and suitability. According to the respondents, there are no vacancies of Khallasis but there are a large number of vacancies of Gangman in Moradabad Division and the applicants have correctly been absorbed in regular Group-D employment as Gangman against the available vacancies.

3. We have heard the learned counsel of both sides and examined the material available on record.

4. Learned counsel of the applicants stated that though the posts of Gangman and Khallasi belong to

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Class-IV the grade for the post of Gangman is higher than that of Khallasi. ^{intrinsically} _{intrinsically} These two categories of posts are ^{intrinsically} _{intrinsically} different. Whereas the Gangman is required to put in physical labour, the Khallasi does not have to undertake as much physical labour for performing his duties. The applicants have been working as Khallasis for more than 10-12 years; they have been declared fit for the post of Khallasis by the Screening Committee and, therefore, they have to be regularised against the posts of Khallasis. The learned counsel of the applicants pointed out that several Gangmen and Masons have been absorbed as Khallasis and, therefore, respondents' plea that vacancy in the cadre of Khallasi is not available is not correct. To illustrate from Annexure A-2, he pointed at Sr. No. 14 and 39 namely, Gomel and Raja Hussain respectively who have been declared fit and absorbed in the posts of Khallasi though they had been working as Gangman and Mason, respectively.

5. Learned counsel for the respondents drew attention to Para-2006 of IREM contending that absorption of casual labour in regular group-D employment is not automatic but subject to availability of vacancies and suitability. He also placed reliance on Annexure R-1 dated 6.9.96 which relates the Minutes of Man Power Planning meeting held on 28.6.96 in

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connection with regularisation of Engineering screened Casual Labour and reads as follows:-

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"The issue of screening of casual labour came out for discussion. On MB division screening of casual labour working on the P.Way side and the works side has been done through common proceedings. Divisions has mentioned that majority of people are on the works side while the vacancies on the P.Way side are more. There has been reluctance on the part of works side to move to the P.Way side. Since it is already the policy of the Railway to screen all available casual labour and absorb them against vacancies of not only that of the department to which the casual labour belong but any other department this problem should not arise. MB Division should follow the extent policy of the Railway, and absorb all casual labour against existing vacancies when vacancies in the parent cadre and duly filled up by absorption of senior casual labour. Absorption will be subject to medical fitness. For exceptions like absorption of female casual labour employees, view can be taken at the divisional level".

6. As per this decision the Casual Labour could be absorbed against the vacancies of not only that of the parent department but in any other department. The learned counsel also stated that vide Memorandum dated 9.4.96 Annexure A-2 dated 20.3.96 was partially modified and the results were modified as "fit Gangman/Khallas" against various items. According to him, this implies that even though the applicants had been initially engaged as Khallas and vide Memo dated 20.3.96 declared fit also as Khallas, their fitness was advised to be read as fit Gangman/Khallas, vide the ^{late} ~~new~~ Memorandum.

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He also mentioned that in the Civil Engineering department of the Railways, there are two Wings, namely, Permanent Wing (PW Wing) and Work Side Wing (WSWing). The Class-IV employees of one wing can be absorbed against vacancies of another wing. On a query by the court, the learned counsel clarified that whereas Gangmen are posted in the PW Wing, Khallasis are posted in both the Wings.

We find from Annexure A-2 dated 20.3.96 that the applicants have been working as Khallasis for over 10-12 years and were declared fit also for the post of Khallasi. The screening had been done by a Committee of four officers belonging to AEN/HQ,AME/P,ADMO & APO (C)/MB. The screening result was modified vide Memorandum dated 9.4.96 produced by the learned counsel of the respondents during the course of the final hearing. This has been signed by the Asstt. Personnel Officer of the Divisional Railway Manager's office Moradabad. Although Annexure A-2 had also been signed by the same officer, this Memo does not indicate that the Screening Committee constituted of four officers had sat again and examined the suitability and fitness of the candidates once again, whereupon the results of the applicants among others were changed from the category of Khallasi to Gangman/Khallasi. We have also observed that the modification in the screening result has been done without assigning any reasons or background. Apart

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from that, we have further noticed that whereas the original result Annexure A-2 was issued with the approval of the competent authority Memo dated 9.4.96 modifying the result does not indicate the approval of the competent authority. For the reasons given above in this paragraph, we cannot accord the same respect to the latter Memo as to the original one.

4. We find that the applicants have been working for 10 to 12 years as Khallasis, they have been screened and declared fit for the category of Khallasi but vide Annexure A-1 have been regularised as Gangmen. Even though as per the provisions of Para 2006 ibid absorption of Casual Labour in regular Group-D employment is not automatic and it is subject to availability of vacancies and suitability yet we have found that whereas certain persons who had been working as Gangmen/Masons i.e. categories other than Khallasi, they have been declared fit and absorbed as Khallasis, thus the plea of the respondents of non-availability of vacancies in the category of Khallasi cannot be accepted. We have also before us the ratio of State of Haryana Vs. Piara Singh (1992(3 SLJ 34 SC) where the Hon'ble Supreme Court has observed:-

"So far as the work-charged employees and casual labour are concerned, the effort must be to regularise them as far as their possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to

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availability of work. If a casual labour is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job".

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10. On consideration that the applicants have been working as Khallasis for over a decade and have been declared fit by the Screening Committee in the category of Khallasis and some employees who had been working in categories other than Khallasis but have been regularised as Khallasis and the ratio of Piara Singh (supra) we have to draw an inference that vacancies of Khallasi exist and vis-a-vis the claim of the applicants the respondents have adduced no good grounds to deny regularisation of the applicants against the posts of Khallasis.

11. Having regard to the above discussion and reasons, the OA succeeds and Annexure A-1 dated 20.12.96 is quashed and set aside. The respondents are directed to implement the result of the screening as declared on 20.3.96 (Annexure A-2) qua the applicants and regularise them as Khallasi on which post they have been found fit by the Screening Committee. No order as to costs.

V.K. Majotra
(V.K. MAJOTRA)

MEMBER (A)

Lakshmi Swaminathan
(MRS. LAKSHMI SWAMINATHAN)

MEMBER (J)

cc.