

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2346 of 1994

New Delhi, this the 30th day of January, 2000

(36)

HON'BLE MR. KULDIP SINGH, MEMBER (J)
HON'BLE MRS. SHANTA SHAstry, MEMBER (A)

1. Shri Ram Chander
S/o Shri Ram Manorath
2. Shri Kishan Singh
S/o Shri Nagra Singh
3. Shri Saroop Singh
S/o Shri Agai Ram
all Helper Khallasis under
under Chief Electrical Foreman (Air Condition)
Rail Bhawan,
New Delhi.

.....Applicants

By Advocate Shri B.S. Mainee.

Versus

Union of India: Through

1. The Secretary,
Ministry of Railways,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
4. Shri Subhash Kumar
S/o Shri Krishan Saroop
5. Shri Vinod Kumar
S/o Shri Salig Ram
working as Helper Khallasis
under Chief Electrical Forman (Air
Conditioning)
Rail Bhawan,
New Delhi.

..Respondents

By Advocate Shri R.L. Dhawan.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

This is a joint application filed by three

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applicants who are working as Helper Khalasis under Chief Electrical Foreman (Air Condition), Rail Bhawan, New Delhi. Their grievances are that the respondents have not called them for trade test for the post of Air Condition Fitter while their juniors respondent Nos. 4 and 5 have been called for the trade test.

2. It appears that the respondents had called certain persons for appearing for trade test for the post of Air Condition Fitter on the basis of some seniority list dated 30.8.94. According to which, respondent Nos. 4 and 5 are probably seniors to the applicants. So the applicants have prayed for modification of seniority list dated 30.8.94 and also that the respondents be directed to hold the trade test of the applicants and assign them proper seniority as Helper Khalasis and appoint them as Air Condition Fitters if they are declared successful in the trade test with all consequential benefits.

3. The facts, as alleged in brief are, that the applicants were appointed as casual labourers during the years 1978-80. They were given temporary status in accordance with their position of seniority based on number of working days.

4. It is further stated that the person who completes 120 days of continuous service is granted temporary status and a casual labourer who completes 120 days earlier, is shown senior and who completes 120 days later, is shown as junior. Accordingly, respondents No.4 and 5 were declared juniors to the applicants. A
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seniority list is stated to have been prepared sometime in October, 1980 which has been annexed as Annexure A-2. Accordingly, the names of the applicants is shown to be appearing at S.No. 2, 3 and 4 of the said seniority list and respondent No.4 is shown at S.No.7 and respondent No.5 is stated to be subsequent to respondent No.4 but the seniority list of that respondent is not available with the applicants.

5. In accordance with the seniority list, the applicants were appointed as Substitute Khalasis vide Annexure A-3. Subsequently screening of the applicants were held on 2.3.1981 vide Annexure A-4 and they were called for being screened vide Annexure A-5. The record of the screening is also stated to have been forwarded to the Air Condition Charge man, Railway Bhawan, New Delhi vide Annexure A-6.

6. It is further stated that the result of the screening held on 25.3.1981 was not declared and applicants also made a representation vide Annexure A-7.

7. Thereafter, the respondents had issued a seniority list of Helper Khalasis of Air Condition cadre vide Annexure A-8 and in the said seniority list, respondent Nos. 4 and 5 have been shown seniors to the applicants. Respondent Nos.4 and 5 have been shown at S.No. 33 and 31 and applicants have been shown at S.No. 81, 123 and 129 though the date of appointment of the applicants are shown as earlier to respondent Nos. 4 and 5. According to the applicants it clearly shows that the seniority has been wrongly assigned to the applicants. A

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protest was also made and when the respondents-Railways were to hold a test at that time objections were also raised vide Annexures A-8, A-9 and A-10.

8. The main ground of challenging the seniority list is that when the dates of appointment of the applicants are shown to be earlier to ^{from of} respondent Nos. 4 and 5, so the applicants cannot be junior to respondent Nos. 4 and 5.

9. It is also pleaded that no other seniority list was ever brought to the notice of the applicants, except the seniority list issued in 1994.

10. The respondents contested the application and have filed their counter-reply. They have stated that the three applicants and respondent Nos. 4 and 5 were regularised as A.C. Khalasis in the grade of Rs. 750-940 and their inter-se seniority as A.C. Khalasis is as under:-

"S No.	Name	Position in seniority list
1.	Shri Ram Chander S/o Shri Ram Manorath	134-A
2.	Shri Kishan Singh S/o Shri Nagra Singh	154-A
3.	Shri Saroop Singh S/o Shri Agya Ram	140-A
4.	Shri Subash Kumar S/o Krishan Saroop	52
5.	Shri Vinod Kumar S/o Shri Salig Ram".	45

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11. It is further stated that the seniority list of the staff indicating the above position was circulated in October, 1987 and April, 1988. Representations/objections against the said seniority list were invited, but the applicants did not object or represent against the above seniority list whereby the respondent Nos. 4 and 5 have been shown senior to them.

12. Thereafter, all these persons were promoted as A.C. Khalasi Helper in the grade of Rs.800-1150 and the applicants were continued to be shown junior to respondent Nos. 4 and 5 as per Annexure A-8 and since the applicants were junior to both respondent Nos. 4 and 5, so they were not called for the trade test of A.C. Fitter in the grade of Rs.950-1500. The applicants were subsequently called for the trade test for the post of A.C. Fitter as per their seniority position vide letter dated 27.3.96 after the filing of the O.A. and after the applicants have passed the trade test, they were promoted as A.C. Fitter.

13. It is further stated that since the applicants were junior to respondent Nos. 4 and 5 in the seniority list of 87 and in the seniority list of 1994, so the applicants could not be called by the respondents for the trade test for the post of A.C. Fitter along with respondent Nos. 4 and 5 and they were called subsequently and as such, the O.A. should be dismissed.

14. We have heard the learned counsel for the parties and have gone through the records.

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15. At the outset it will not be out of place to mention here that when this O.A. came up for hearing for the first time, the following order was passed on 29.11.1994:-

" Issue notice to the respondents returnable on 10.1.1995.

Meanwhile, if any permanent appointment is made on the basis of the Trade Test already held, the same shall be subject to the decision of this O.A."

16. Though in this Original Application the applicants have expressed their grievance for not having been called for the trade test for the post of Air Condition Fitter but the contents of the OA reveals that under the garb of this, the applicants have approached this court to challenge their seniority position, which according to respondents, were settled sometime in October, 1987 and then on 22.4.88. It is further clear from the prayer clause of application itself that when the applicants in para 8 of the column of reliefs have first asked for modifying the seniority list issued on 30.8.94 vide Annexure A-8 and after the modification of the seniority list then they have prayed that the respondents be directed to hold the trade test and assign them proper seniority. So the main dispute in this case is regarding assigning of proper seniority to the applicants.

17. As far as assigning of proper seniority is concerned, the respondents had pleaded that after the initial screening sometime in the year 1981, seniority was assigned in the month of October, 1987 which was given proper circulation and the said seniority list was

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prepared strictly in accordance with the seniority in the order of merit in the screening test. So now the same cannot be challenged by this O.A. as the seniority position has been settled and this O.A. has been filed after a long gap and by virtue of doctrine of laches, the O.A. is not maintainable and the same should be dismissed.

18. In reply to this, the learned counsel for the applicants submitted that the applicants were assigned seniority as per Annexure A-2 and they were shown seniors to respondent Nos. 4 and 5. But thereafter, the applicants came to know of seniority list of 1994 only after the respondents had called the juniors to the applicants for the trade test and they had ignored the applicants for the said trade test. So there was no occasion to challenge the said seniority list. Besides that, the counsel for the applicants submitted that the applicants have a strong case on merits since they were appointed earlier and as per Annexure A-2 they were placed senior to respondent Nos. 4 and 5, so they have a strong case and the Government should not be allowed to stand on technical plea of limitation. In support of his contention, the learned counsel for the applicant has relied upon a case titled as Madras Port Trust Vs. Hymanshu International By its Proprietor Vs. Venkatadri (Dead) By L.R.s reported in 1979 (4) SCC 176.

19. The counsel for the applicant has further stated that in this particular case it is the Railway Government who is at fault because screening is not selection and as per Annexure A-2 since applicants were senior and because of some fault on the part of the Railway Administration

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the applicants seniority have been depressed in the seniority list of 1994, so the plea should not be allowed to be taken because it was fault of the Government itself and to support his contention he has relied upon a case reported in 1996 SCC (L&S) 1384 - S.R. Bhanrale Vs. U.O.I. & Others.

20. On the contrary, the learned counsel for the respondents relied upon a judgment reported in JT 1998 (1) SC 57 - B.S. Bajwa and Another Vs. State of Punjab and Others wherein the Hon'ble Supreme Court has observed as follows:-

"Writ - Seniority - Held in service matters the question of seniority should not be reopened after lapse of reasonable time - There was inordinate delay and interference in Article 226 was to be declined - Writ was not to be entertained".

21. On the same lines, he has also relied upon a judgment reported in 1991 SCC (L&S) 1206 - Government of Andhra Pradesh and Others Vs. M.A. Kareem and Others wherein the Hon'ble Supreme Court has observed as follows:-

"Seniority - Laches - Held, position settled 13 years back could not be unsettled".

22. In this case, according to the respondents after the screening sometime in October, 1987 a seniority list was published showing the names of respondent Nos. 4 and 5 senior to the applicants, but the applicants had not raised any murmur at that time. We find on record only a

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letter Annexure A-7 which has been issued by the applicants on 24.2.1987, the signatory to the letter which includes the applicants appearing for screening before making a complaint that they had appeared on the screening held on 25.3.1981 in which certain Khalasis have been declared passed who are junior to them but their results have not been declared so far and it appears that thereafter they had not followed up any action on the same. One thing is certain that when this letter Annexure A-7 was written by the applicants certain persons who were junior to them, their results had been declared and they had been declared pass but the applicants had not been declared pass by them. So this shows that when this letter was sent by the applicants, they were aware that some persons junior to them have been placed senior to them by declaring them pass.

23. Further it is stated that from 1987 till the date of filing of the O.A., the applicants had not challenged the seniority list and when this Annexure A-8 was circulated, objections to the same were also invited but it again appears that the applicants had not made any representation challenging the seniority list circulated vide Annexure A-8. Letters at Annexures A-9 and A-10 only show that the applicants had only grievance that why they were not called for the trade test, but no objections to the seniority list was ever made. This O.A. appears to have been filed only for the rectification of the seniority list which was settled sometime in the year 1987 itself and which fact was well known to the applicants as it is quite manifest from Annexure A-7 itself. So at the time of the filing of the O.A., the application had become



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time barred and the rulings cited by the learned counsel for the respondents, i.e., B.S. Bajwa (Supra) and M.A. Kareem (Supra) fully support the case of the respondents and the seniority, so assigned, which has become settled, cannot be unsettled by now.

24. In the result, the O.A. has no merits and the same is dismissed but without any order as to costs.

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(SHANTA SHASTRY)

MEMBER (A)

Kuldip S. 3.12.2002
(KULDIP SINGH)

MEMBER (J)

Rakesh