

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH.

O.A. NO. 2346/89

New Delhi this the 10th day of May, 1994.

Shri Justice V.S. Malimath, Chairman.

Shri P.T. Thiruvengadam, Member(A).

1. Ami Chand
S/o Shri Ganga Sahayak.
2. Prem Singh,
S/o Shri Avtar Singh.
3. Lalit Joseph.
4. Rajender Kumar
S/o Shri Haram Singh.
5. Rajbir Singh.

(All working under the Senior
Divisional Electrical Engineer,
(TRD), D.R. M. Office, N. Delhi)

... Petitioners.

By Advocate Shri B.S. Mainee.

Versus

1. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
2. The Sr. Divisional Electrical,
Engineer (TRD), DRM Office,
New Delhi.

... Respondents.

By Advocate Shri B.K. Aggarwal.

O R D E R (ORAL)

Shri Justice V.S. Malimath.

The petitioners five in number were appointed as Casual Labours in the year 1978. Thereafter, they were appointed as Substitute Khalasis sometime in the year 1982. They were thereafter considered for regular absorption in the post of Electrical Khalasis and they were after their selection duly appointed on different dates in the year 1983

✓ as Substitute Electrical Khalasis. The Railway administration

had taken steps for regular direct recruitment of Electrical Khalasis after inviting applications and interviewing the candidates. A list of selected candidates was prepared on 14.5.1982 consisting of 142 persons. Those persons who were in the select list were given appointment from time to time. 34 persons were appointed in the office in which the petitioners were working. All of them were appointed on different dates in the year 1982. A seniority list of regularly appointed Electrical Khalasis was prepared as per Annexure A-1 dated 8.10.1987. The petitioners have been assigned, in the seniority list, rankings 111, 119, 137, 138 and 148. So far as 34 direct recruits who came to be appointed in the office in which the petitioners were working, are concerned, they have been assigned rankings 50 to 83. A bare perusal of the seniority list shows that the seniority has been fixed taking into account the date of appointment. So far as the petitioners are concerned, as they were regularly absorbed as Electrical Khalasis in the year 1983 and as the direct recruits were appointed on regular basis in the year 1982, it is the latter that ~~they~~ have been placed in the seniority above the petitioners.

2. The contention of Shri B.S. Mainee, learned counsel for the petitioners, is that the principle 'A' laid down in JT 1990(2) SC 264 between the Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra, is applicable to this case and that the petitioners are, therefore, entitled to be placed above those 34 direct recruits. The principle 'A' is in the following terms:

"Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

Corollary of the above rule is that where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority".

We are really not concerned with the corollary in this case. The principle 'A' states that if a person is appointed in accordance with the rule, his seniority would count from the date of his appointment and not according to the date of his confirmation. What is emphasised in principle 'A' is that it is ~~the~~ date of regular appointment in accordance with the rule that is relevant for the purpose of seniority and not the date of confirmation. The only question for consideration is as to when the petitioners can be regarded as having been appointed as Electrical Khalasis. They were regularly appointed in the year 1983. Shri Mainee, however, stated that they were regularly appointed as Substitute Khalasis earlier than 1983 and, therefore, the dates from which they were regularly appointed as Substitute Khalasis should be taken into account. That there are certain rules for making appointment as Substitute Khalasis cannot be ignored. What is relevant for our purpose is not the question whether the petitioners were appointed as Substitute Khalasis as we are not concerned in this case with the seniority list of Substitute Khalasis. We are only concerned with the seniority list of regularly appointed Electrical Khalasis. The Substitute Khalasis could only become regularly appointed Electrical Khalasis on their being screened, selected and appointed. That took place in the year 1983. Therefore, their regular appointment in accordance with the rules was only in the year 1983. Hence, the respondents have rightly taken into account the dates on which the petitioners were regularly appointed as Electrical Khalasis as the dates for determining their seniority. That the petitioners were working as Substitute Khalasis in regular vacancies and that there was delay in making the appointment and that they should not suffer is not a contention

which has an factual foundation to support it.

3. Shri Aggarwal, however, submitted that we should not interfere in this case as necessary parties, who are likely to be affected, were not impleaded. As on merits this application is liable to be dismissed, we consider it not necessary to examine ~~on~~ this question.

4. For the reasons stated above, this petition fails and is dismissed. No costs.

P. T. Dir

(P.T. Thiruvengadam)
Member(A)

V.S. Malimath

(V.S. Malimath)
Chairman

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