

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

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original Application No. 368 of 2001
this the 28th day of March 2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

1. Sabhajeet S/o Sri Ram Bahal.
2. Panna Lal, S/o Sri Mathura Prasad.
3. Antoo Lal, S/o Sri Chhotey Lal.
4. Ram Lagan, S/o Sri Ram Nihore.
5. Bharat Lal, S/o Sri Raghunath.
6. Ramayan Prasad, S/o Sri Jaggan Nath.

All are posted and working on the post of Khalasi
under the Dy. Chief Engineer (Construction), N.R.,
Allahabad.

Applicants.

By Advocate : Sri S. Dwivedi.

With

original Application No. 659 of 1998.

1. Vishwanath, S/o Sahdeo.
2. Ram Vishal, S/o Pitamber.
3. Vishal Lal, S/o Ram Khelawan.
4. Gama, S/o Tulsi.
5. Genda Singh, S/o Chotey Lal.
6. Sewa Lal, S/o Ram Nandan.
7. Roshan Lal, S/o Ram Das.

All are posted on the post of Khalasi under the
Dy. Chief Engineer (Construction), N.R., Allahabad.

Applicants.

By Advocate : Sri S. Dwivedi.

Versus.

1. Union of India through General Manager, N.R.,
Baroda House, New Delhi.
2. The Chief Administrative Officer (Construction),
N.R., Headquarters Office, Delhi.

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3. The Dy. Chief Engineer (Construction), N.R.,
Allahabad.

Respondents.

By Advocate : S/Sri P. Mathur & A.V. Srivastava.

O R D E R (O R A L)

~~since~~ ^{both of} In the aforesaid O.As, the facts and law are identical, therefore, they have been heard together and are being disposed off by a common and consolidated order. For the purposes of giving the facts, I am taking up the case of O.A. no. 368 of 2001.

2. Both the O.As have been filed by 13 applicants challenging the impugned orders dated 22.2.2001 and 12.6.1998 respectively whereby the applicants were directed to be relieved with the instructions to report to Dy. CE/C-II/Chandigarh for their posting against the posts of Khalasi. (Annexure A-1). The order dated 22.2.2001 was partially modified and by the modified order, the applicant nos. 4 & 6 in O.A. no. 368 of 2001 was also directed to be relieved (Annexure A-2). yet by another order dated 7.3.2001 in supersession of the earlier order dated 22.2.2001 transfer of certain Khalasis were cancelled, while other Khalasi was directed to be spared with direction to report to Dy. CE/C II/Chandigarh for their posting (Annexure A-3). In this order, sl. nos. 1, 3, 7 & 8 are applicants before me. Their grievance is that once these Khalasi-s have been given a proper lien in Allahabad Division after regularisation, they cannot be transferred to Chandigarh and incase they have become surplus in the Construction Organisation, at best they could be sent back to their parent division. It was also submitted by the applicants that they could not have been transferred out, while retaining the persons junior to them at Allahabad. To substantiate their claim, they have annexed the seniority list to show that there are number of persons who are shown in the



first para of Annexure A-3 and whose orders of transfer have been cancelled, they are all juniors to the applicants. The counsel for the applicants has submitted that in case of surplus, the respondents ought to have followed the principle of 'last come first go' and juniors should have been transferred out instead of sending the applicants. They have, thus, submitted that the impugned orders may be quashed and set-aside and the respondents be directed to allow the applicants to continue either under the respondent no.3 or they be directed to send ^{back to} their parent unit/office/division where they were holding their lien.

3. The respondents in their Counter affidavits have opposed the O.As and have submitted that they have cancelled the transfer orders of only those persons who were either handicapped or ladies, ^{or B} who were given compassionate appointment as these Khalasias were required to be sent to Chandigarh for construction work and physically handicapped and compassionate appointees females will not be able to perform any work in the construction and since these Khalasias are required for construction work at Chandigarh, they cannot be ^{retained} sent as they have already become surplus in the construction division at Allahabad. They have also submitted that except ladies and physically handicapped persons, no other junior has been retained at Allahabad construction organisation. They have, thus, submitted that there is no merits in the O.As and the same may be dismissed.

4. At the time of arguments, the applicants' counsel has relied on a judgment given by this Tribunal in O.A. no. 1064 of 2001 wherein one of the persons who ~~were~~ transferred alongwith the applicant had challenged his transfer order on the ground that he could not have been transferred out so long his juniors were retained at Allahabad. The Tribunal after hearing the respondents'

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counsel allowed the O.A. by directing the respondents to permit the repatriation of the applicant to his parent unit where he is holding his lien and not to ask him to go to construction organisation at Chandigarh. The applicants' counsel has also submitted that the letter which has been annexed by the respondents in their Counter affidavit was written as ~~was~~ back as in the year 1993 to show that there was no vacancy available in the division, but thereafter the respondents have themselves sent as many as 10 persons back to their parent unit/division from the construction organisation by issuing the order dated 23/29.10.2001. Therefore, he submitted that it is not correct to say that the division does not have any vacancy. The said order was given to the Court across the table and since the respondents' counsel had not been able to give the latest position with regard to availability of the vacancies in the division, the matter was adjourned for one day to enable the respondents' counsel to take instructions from the department. Today, when the matter was called-out, the counsel for the respondents made a statement on the instructions given by Sri Krishan Shanker, office Supdt. Dy. C.E.(C), N.R., Allahabad, that the respondents would have no objection if a direction is given to them to send back the applicants to their parent unit/division where they are holding their lien. Since the applicants' relief itself is to send ^{them} back to their parent unit/division incase they have become surplus and the respondents have no objection to the same, the impugned orders passed in both the O.As are quashed and set-aside and both the O.As stand disposed off by giving a direction to the respondents to send back the applicants to their parent unit/division where ^{ever} they are holding their lien, incase they have become surplus in the construction ^{organisation} ~~division~~. All the applicants are continuing at Allahabad under the interim orders passed by this Tribunal. It is

clarified that the applicant no.4 in O.A. no. 368 of 2001 may be transferred back to Lucknow Division as he is stated to be holding his lien in Lucknow division. This exercise should be completed within a period of three months from the date of receipt of ^a copy of this order. Till the applicants are repatriated to their parent unit/division, the respondents are directed to maintain status quo.

8. Let a copy of this order be kept in file of O.A. No. 659/98 also. 18

5. Both the O.As stand disposed off as above without any order as to costs.

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