

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 29th Day of April 2014)

Hon'ble Mr. Justice S.S. Tiwari, Member (J)
Hon'ble Ms. B. Bhamathi, Member (A)

Original Application No. 1626 of 2003

1. Puran Singh son of Sri Kalyan Singh, resident of Village Sultanpur, Post Khurja, Junction, District Bulandshahar.
2. Raj Kumar son of Sri Udai Veer, resident of Village Madanpur, Post Khurja Junction, District Bulandshahar.

..... Applicants

By Advocate: **Shri Satish Dwivedi**

Versus

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. The Divisional Superintendent Engineer (II), North Central Railway, Allahabad.

..... Respondents

By Advocate: **Shri P.N. Rai**

O R D E R
(Reserved on 10.04.2014)

Delivered by Hon'ble Ms. B. Bhamathi, Member (A)

This O.A. has been instituted for the following relief/s:-


- (i) "That the order dated 17.9.2003 and the oral direction to applicants to work as Track Man/Gang Man passed by respondents be declared illegal and same may be quashed and further the respondents be directed to post/adjust/absorb to applicants in the pay scale and post of Khalasi/Chain man/Chowkidar.



(ii) Any other and further relief which this Hon'ble Tribunal may deem fit and proper be also awarded to the applicants.


(iii) Cost of proceeding be awarded in favour of applicants."

2. The case of the applicant is that he was initially engaged as casual worker and on being found fit in medical category B-I was appointed on the post of Gangman on 25.6.1987. However, on 15.08.1987, they were posted on the post of Khalasi/Chainman/Chowkidar and were paid the scale of said post and not that of Gangman. The post of Gangman/Trackman is higher than the post of Khalasi/Chainman/Chowkidar. They are getting the pay scale of Khalasi/Chainman/Chowkidar and in the PF A/c, pay slip, duty pass family, pass their designation is shown as Khalasi/Chainman/Chowkidar. In 1992, the responders directed the applicants and the others similarly situated Khalasi/Chainman/Chowkidar to work as Gangman/Trackman. The applicant No.1 along with 9 others approached this Tribunal vide O.A. No.1104 of 1992. The applicant No.2 approached this Tribunal vide O.A. No.1467 of 1992 for giving direction to the respondents to restrain from interfering in performance to their duties as Chainman/Chowkidar/Khalasi. During the pendency of the O.A., all except the present applicants have been absorbed in the pay scale of Chainman/Khalasi/Chowkidar. Although, applicants were given assurance that hey would be absorbed in the pay scale on the post of Khalasi no action was taken by respondents. On 08.11.2000, the O.A. referred above, was disposed of finally by a common/single order



directing the respondents to decide the representation dated 20.1.1993 of the applicants. On 17.9.2003, the respondents rejected the case of the applicants on the ground of administrative interest, without considering the representation dated 20.1.1993. Hence, this O.A.

3. The respondents have averred that the applicants were appointed as Daily rated casual labourer Gangman on 6.8.1984. They were given CPC scale in the grade of Rs.775-1025/- on 15.8.1987 and the pay was fixed as Rs.787 in August' 1988 in the same grade. The applicants came on transfer from P.W.I., Allahabad Jn. to the present place of posting i.e. Khurja Jn. w.e.f. 27.7.1992. In the letter of P.W.I., Spl. Allahabad, the designation of the applicants has been shown as Gangman in the grade of Rs.775-1025/- vide letter dated 22.8.92, but the applicants have refused to work as Gangman in that grade. It has also been mentioned that the temporary appointment has been issued by A.E.N., Allahabad Jn. to the applicants to the post of Gangman, but later on, they have refused to work as Gangman. It has also been stated that the applicants were never paid salary as Khalasi/Chainman/Chowkidar and there is no such designation of Khalasi/Chainman/Chowkidar. The duty passes and privilege passes have been issued to the applicants as Khalasi/Trackman by the concerned unit. No posting orders for the post of Khalasi/Chowkidar etc. are mentioned in the service records of the applicants. The respondents have fully complied with the order dated 08.11.2000 of the Tribunal by passing a reasoned and speaking order dated 17.9. 2003. No assurance has ever been given




to the applicants by the Railway administration for their absorption and posting as Khalasi/Chainman/ Chowkidar. No representation dated 20.1.1993 has been received by the respondents, as alleged by the applicant. Since, the applicants have been appointed as Gangman, they have rightly been asked to work as Trackman/Gangman and there are no compelling circumstances. It is submitted that the applicants had no grievance for working on the post of Khalasi/Chainman/ Chowkidar as actually they are not performing on that post. The applicants have no right to be posted as Khalasi/Chainman/ Chowkidar. The adjustment of the applicants on the post of Khalasi/Chainman/ Chowkidar is not administratively possible. The order directing the applicants to function as Trackman/Gangman has been issued in the exigencies of service. Hence, this O.A. is devoid of merits and is liable to be dismissed.

4. We have gone through the O.A. of the applicants and also annexures A-1 to A-31 accompanying the O.A. No Rejoinder Affidavit has been filed by the respondents.

5. We have also gone through the Counter Affidavit filed by the respondents.

6. This case was listed for hearing on 11.3.2014, 19.03.2014, 28.03.2014, but none was present for the applicant. On 10.04.2014, again none was present for the applicant even when the case was called twice and considering the old pendency of the case, the Bench has heard the argument of the respondents' counsel and this case was reserved for orders. However, liberty was granted to the applicant's counsel to file



written submission within one week but the same has not been filed. Hence, we proceed to decide the case taking into account the facts available on record.

7. It is noted from both Annexure A-2 and A-3 dated 25.6.1987 (both medical certificates) of the O.A. that the applicants have been considered for appointment as Gangman. Annexure CA-1 filed by the respondents issued in respect of Shri Puran Singh (Applicant No.1) also shows that temporary appointment was given on 25.7.1996 in the grade of Rs.775-1025 as Gangman, although no such document has been provided in respect of Applicant No.2. Further, in the impugned order dated 17.9.2003 it is stated as follows:-

“उपरोक्त कोर्ट केस के निर्णय के अनुपालन में गैंगमैन से खलासी/चेनमैन पद पर विकोटिकृत के सम्बन्ध में आपका अभ्यावेदन/representation सक्षम अधिकारी के विचार उपरान्त यह निर्णय लिया कि आपको गैंगमैन से खालासी पद पर विकोटिकृत किया जाता संगत नहीं है क्योंकि यह प्रशासनिक हित आवश्यकता के अनुरूप नहीं है।”

8. From the above it is clear that applicants were appointed as Gangman, as admitted by the applicants that they were declared medically fit in B-I category for Gangman. It is another matter, that a person declared fit in B-I medical category can also be appointed as Khalasi/Chainman/Chowkidar. The applicants have also stated that the pay scale of Khalasi/Chainman/ Chowkidar is lower than that of the Gangman, Hence, even at the very outset, they should normally not have accepted to be working against the lower post of Khalasi/Chainman/Chowkidar, which they did without any protest. Having been appointed as Gangman to re-designate the applicants now

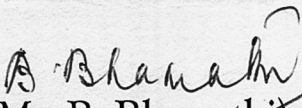


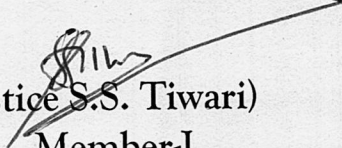
as Khalasi/Chainman/ Chowkidar would amount to de-categorization as stated in the impugned order. Even in administrative interest, if their services were required as Gangman and not as Khalasi, we see no lacuna in the impugned order passed by the respondents, as they were appointed as Gangman and not as Khalasi/Chainman/Chowkidar.

9. It is also worth to mention that pay slips, privileges passes etc cannot have any overriding role in providing evidence for determining the status of the employee over that of appointment letters or appointment related documents that have been provided in this O.A. by both parties.

10. The applicants have mentioned at Para-9 of O.A. that during the pendency of earlier O.A No.1104 of 1992 and 1467 of 1992 all the applicants of the said O.As, except the present applicants, were absorbed in the pay scale of Khalasi/Chainman/Chowkidar permanently and they were not sent on the post of Gangman. This has been denied at para-18 of the CA. Hence, the applicants have not been able to make out any case of discrimination.

11. Hence, we are of the view that the case is devoid of merits. We have no reason to interfere with the order of the respondents. Accordingly, the **O.A. is dismissed.** No costs.


(Ms. B. Bhamathi)
Member-A


(Justice S.S. Tiwari)
Member-J

Sushil