

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

MA 148/96
OA 580/96

Present : Hon'ble Mr.D.Purkayastha, Member(J)
Hon'ble Mr.L.R.K.Prasad, Member(A)

- 1) D. Appa Rao
- 2) D. Rama Kumar
- 3) Ramanand Singh
- 4) Om Narayan Singh

..... Applicants

-Vs-

- 1) Union of India, service through the General Manager, S.E.Rly, Garden Reach, Calcutta-43
- 2) Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta-43
- 3) Chief Material Manager, S.E.Rly, Garden Reach, Calcutta-43
- 4) Controller of Stores, S.E.Rly, Garden Reach, Calcutta-43
- 5) Dy.Controller of Stores, S.E.Rly General Stores, Kharagpur-721301
- 6) Probir Kumar Roychoudhury
- 7) S. Prasad
- 8) S.K. Mahato
- 9) B. Patra
- 10) L.Murali Mohan Rao
- 11) C.Siva Sankar
- 12) P.C.Nayak
- 13) S.Nath
- 14) H. Mahato
- 15) K.Hembram

..... Respondents

Learned counsel for the applicants :

Mr.P.C.Maity
Mr.T.K.Biswas

Learned counsel for the respondents:

Mr.B.P.Roy
Mr.P.Nag for Pvt.Res.

Heard on : 16-7-2001

Order on 24/7/2001

ORDER

Mr.D. Purkayastha, Member(J) :

This is a joint application filed by 4 persons challenging the appointment of the Private Respondent Nos 6 to 15 as Hot Weather Waterman (Khus Khus Khalasi) as per order dated 3-5-96.(Annexure A6).

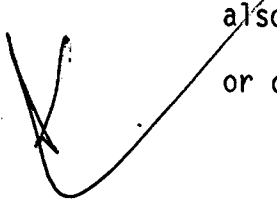
2. The Applicant Nos 1 and 3 are retired Railway employees of S.E.Rly at Kharagpur, while applicant Nos.2 and 4 are their respective sons. The case of the applicant is that the Railway Respondents appoint Khus Khus Khalasi on seasonal basis every year and the appointment is generally restricted to the wards of serving and retired Railway employees. As usual for the year 1996 the Rlys have appointed 10 Khus Khus Khalasies as per Annexure A-6 dated 3-5-96 (the Private Respondents) for the period from 4-5-96 to 1-7-96. The grievance of the applicants is that the applicant Nos 1 and 3 are also retired employees and their sons, applicant Nos 2 and 4 have also applied for being appointed as Casual Khus Khus Khalasi for the year 1996. But, their cases have not been considered by the respondent authorities and the private respondents have been appointed as such. It is pointed out that as per policy decision of the Railways dated 11-4-95 it was decided that sons/daughters of the serving/retired employees should be appointed against such casual posts. This policy decision was challenged before this Tribunal in OA 828 of 1995 and OA 858 of 1995 by the present Applicants and this Tribunal held that the aforesaid policy decision of appointing only the wards of serving/retired employees was bad and illegal being violative of articles 14 and 16 of the Constitution. It was also held that there should not be any restriction between open market candidates and candidates of serving or retired employees. It was held that the guidelines dated 11-4-95 was illegal and unconstitutional and hence the same was struck down. The grievance of the applicants is that in spite of the decision of the Tribunal, the respondents have again made appointment from amongst the wards of serving/retired employees. They have also alleged discrimination since even though they are sons of retired employees, their case has not been considered and the private respondents have been selected and appointed arbitrarily. They have, therefore, prayed for cancellation of

the appointment in favour of the private respondents and for a direction on the respondents to consider their cases for appointment.

3. The Railway respondents have filed reply in which they have stated that the appointment to the private respondents have been given in accordance with the Railway Rules. It is stated that the case of the Applicant Nos 2 and 4 have also been considered, but they have not been recommended by the Selection Committee. It is also stated that due to inadvertance the appointment order dated 3-5-96 (Annexure R2) of the private respondents has mentioned that the appointments have been given to the wards of retired and serving employees. It is their case that outsiders have also been considered along with the wards of retired and serving employees. Their contention is that since the case of the Applicant Nos 2 and 4 has also been considered and they have not been recommended by the Selection Committee they cannot raise any grievance. It is also stated that previously also the applicants approached this Tribunal for similar relief which was not accepted.

4. The Private Respondents have also filed a separate reply in which they have stated that they have been appointed by the authorities as per rules.

5. During the pendency of the OA, the Applicants have filed a Misc. Application No. MA 148 of 96 in which they have challenged a Recruitment Notice for 300 Khalasis dated 7/10-7-96 (Annexure 'X' to the MA). It is stated that in this case also the respondents have mentioned in the Notice that wards or dependents of serving Railway employees and course



completed Rly Act Apprentices fulfilling the eligibility conditions may submit their applications directly whereas outsiders including the wards of retired Railway employees have to apply through Employment Exchange. It is contended that the Rly Authorities cannot give preference to the wards of serving Rly employees only in the matter of appointment as regular Khalasi.

6. It appears that an interim order was passed on 26-8-96 staying the operation of the impugned Notice dated 7/10-7-96 (Annexure-X) which is still subsisting.

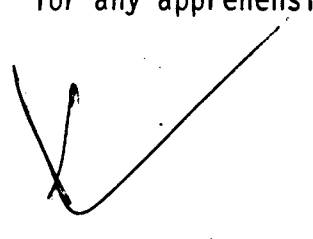
7. The Rly Respondents have also filed a separate reply to this MA in which they have stated that the impugned Notice has been issued in accordance with the rules and that there was no discrimination between outsider and the wards of serving Rly employees. It is also stated that the posts advertised through Notice dated 7/10-7-96 relate to open market recruitment of Khalasi in regular pay scale in Group D category and this has no nexus with the seasonal appointment of Khas Khas Khalasi which was challenged in the OA.

8. We have heard the learned counsel for the all the parties. During the course of hearing, the learned counsel for the applicant mentioned that the appointment of Private Respondents have already been terminated and the Rlys have not taken any steps in the matter of appointment of regular Khalasi as per Annexure-X to the MA. It is also admitted that the OA has become infructuous.

9. The learned counsel for the official respondents, Mr. Roy has admitted that for appointment of Khas Khas Khalasi for a limited period no advertisement is made by the Rlys and it is the usual practice that during every summer season intending candidates submit their applications and on consideration of the same, appointments are given for limited period of 2/3 months.

10. We have considered the matter very carefully. So far as the OA is concerned it is not disputed that it has become infructuous in view of the fact that appointment of Private Respondents have already been terminated. However, we are surprised to learn that for appointment as Khas Khas Khalasi during the summer season no open advertisement is made by the Rlys and this may lead to nepotism, favouritism and corruption. It is now well settled that in public employment, an open selection process should be followed and there should not be any discrimination or any reservation of appointment on the basis of descend since this violates the equality concept enshrines in our constitution. Moreover, backdoor entry into public office cannot be encouraged.

11. So far as the MA is concerned, we find that in the impugned Notice dated 7/10-7-96 there were 300 vacancies of Khalasis in the Stores Department in the pay scale of Rs750-940/-. The break up of reservation has also been given. It is mentioned in Column 9 that the wards/immediate dependents of serving Rly employees (as per pass rules) as on 1-1-96.....may submit applications directly. The learned counsel for the applicant has objected to this particular clause and he apprehends that by this clause the respondents are trying to give preference to the wards of only serving Rly employees. The learned counsel for the respondents have, however, stated that there will be no discrimination between the candidates who are wards of serving Rly employees and outsiders and therefore the applicants have no valid reason for any apprehension.



12. Be that as it may we are of the opinion that there should not be any discrimination between the wards of serving Rly employees and others when it is admitted by the Rly respondents that the posts in question are meant for open market recruitment. In such recruitment, it is now well settled by several decisions of this Tribunal as also the Hon'ble Supreme Court that the authority should notify the Employment Exchange and make public advertisement with wide publicity so that only suitable candidates can be selected and the field of choice is enlarged considerably for ensuring proper selection.

13. In view of above, we dispose of both the OAs and MA with the following directions :

1) So far as direct appointment to the posts of Khas Khas Khalasi is concerned, the Rly respondents shall ensure that henceforth appropriate advertisement should be made for direct recruitment of such Khas Khas Khalasi in an open manner, i.e. to say that they should notify the Employment Exchange and make wide publicity of such vacancies and on receipt of applications in response to such advertisement, selection should be made in a fair and equitable manner. In no way, the appointment should be only restricted to the wards of serving or retired employees, since the policy decision dt. 11.4.95 in that regard having already been held to be unconstitutional.

2) So far as direct recruitment to the posts of Khalasi as per Annexure - X to the MA is concerned, it is ordered that that the respondents may take appropriate action for freshly advertising the posts, if they still require such vacancies to be filled up, and that there should not be any discrimination between the open market candidates and the wards of serving Rly employees as was sought to be done by

(7)

the impugned notification. All the candidates should submit their applications in the same manner without any preference or exception to any particular group and the selection should be made in a fair and equitable manner by a duly constituted selection committee as per rules.

- 3) The interim orders are vacated.
- 4) There shall be no order as to the costs.

24/7/01
(L.R.K. Prasad)
MEMBER(A)

24/7/01
(D. Purkayastha)
MEMBER(J)