

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
OA 301 OF 1996

Present : Hon'ble Mr. D. Purakayastha, Judicial Member

Hon'ble Mr. G. S. Maingi, Administrative Member

1. Tapas Chakraborty
 2. Dilip Kumar Ghosh
 3. Ashim Ganguly
 4. Subasis Dey
 5. Probodh Kumar Mitra
 6. Chinmoy Deb
 7. Mrinal Kanti Dey
 8. Dulal Dey
 9. Nepal Chandra Dey
 10. Bholanath Bandopadhyay
 11. Kalyan Kr. Bandopadhyay
- Petitioners

VS

1. Union of India through the
General Manager, Chittaranjan
Locomotive Works. Chittaranjan.
 2. Chief Personnel Officer,
C.L.W. Chittaranjan.
 3. Asst. Personnel Officer (HQ),
C.L.W. Chittaranjan.
- Respondents

For the petitioners : Mr. B.R.Bhattacharjee, Counsel
Mr. P.C. Das, Counsel

For the respondents : Mr. R.N.Das, Counsel
Mr. M.M.Mallick, Counsel

Heard on : 8.12.99 : Order on : 19.1.2000

ORDER

D.Purakayastha, J.M.:

In this original application filed under section 19 of the Administrative Tribunals Act, 1985, the 11 applicants have prayed for the following reliefs :-

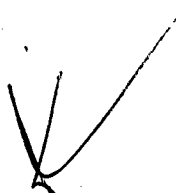
- i) For a direction upon the respondents to give appointment to the applicants to the post of D-2 Khalasi as has been given to the persons whose appointments were cancelled by the Hon'ble Tribunal but were allowed by the respondents to retain in service as D-2 Khalasi
- ii) For an order quashing and/or setting aside the office order dt. 7.1.94 made Annexure this application and also Memo dt. 14.10.93 (Annexure-E).

2. In order to understand the grievance of the applicants, it is necessary to state the facts in some details as under :

The respondent CLW authorities issued an employment notice No. D/2/85 dated 18.12.85 calling for applications for formation of a panel for filling up of 400 Group D posts for posting outside the workshop in various departments under the respondents, commonly known as D-2 Khalasi. The break up of vacancies was also given as SC 68, ST 32 and UR 300. Accordingly, the present applicants along with several hundreds persons applied and written tests were also held on 12.9.87 and 13.9.87 followed by viva-voce tests conducted from 20.6.88 to 10.8.88 and again from 20.6.88 to 10.8.88. It is alleged by the petitioners that they also got call letters for appearing at viva-voce test after having become successful in the written test. Thereafter a panel of 599 candidates was published on 15.10.88. Some unsuccessful candidates, whose name did not find place in the final panel, challenged the entire selection process before this Tribunal by filing OA 728 of 1989 on, the ground of gross irregularities and favouratism. It is averred by the petitioners that some of them were also parties to the aforesaid OA although no particulars of the applicants have been mentioned. However, the said OA was heard and decided by this Tribunal by its judgement and order dated 7.9.90. The Tribunal in fact noticed certain irregularities in the conduct of the selection process and accordingly quashed the impugned panel and directed the respondent authorities to prepare a fresh panel after proceeding in the following manner :-

"i) The marks obtained by the candidates in the written test will not be disturbed. We uphold that list.

ii) From out of the candidates who appeared in the written test, the respondents should call for interview and physical test, candidates equal in number to five times of the number of vacancies.



: 3 :

iii) The candidates to be so called for interview and physical test should be selected on the basis of marks obtained at the written test in descending order.

iv) These candidates should be subjected again to viva-voce test and physical fitness test in accordance with the norms laid down in the employment notice and the interview letters that were issued at the time of holding selection.


v) On the basis of the marks obtained by the candidate in the written test, physical fitness test and viva-voce test....a panel should be prepared in order of merit. The number of candidates to be included in the panel will be equal to the number of vacancies or expected vacancies."

The aforesaid orders were directed to be complied with within a period of six months. Subsequently, some of the applicants of the aforesaid OA filed two contempt petitions bearing Nos. CCP 77 of 90 and CCP 35 of 91 alleging violation of the aforesaid orders of the Tribunal by the respondent authorities. The aforesaid two CCPs were disposed of by the Tribunal on 21.2.92 by a common judgement by passing the following orders :-

a) The CLW authorities, particularly the alleged contemners, will publish the list of the first 2000 candidates who were selected in the written test which was upheld by the Tribunal.

b) These candidates will be called for oral test followed by physical fitness test and based on these facts, a panel of 400 candidates will be prepared and published on or before May 5, 1992.

c) Such of the candidates who have already been employed during the pendency of OA No. 728 of 1989 and after the case was decided, will be declared to have been appointed irregularly and their appointment cancelled within 15 days of the receipt of a copy of this order. However, there is no objection if they are given alternative engagement/employment



without affecting the rights of the candidates to be appointed from the panel to be prepared afresh.

d) If any of the candidates mentioned in sub-para (c) above, came within the zone of selection amongst the 2000 candidates, who have been selected for further oral and physical fitness test, they may be allowed to take these test afresh and considered in order of their merit for inclusion in the fresh panel.

3. The applicants allege that the respondents authorities did not comply with the aforesaid orders of the Tribunal inasmuch as they prepared a panel of 561 candidates although vacancies notified were only 400. It is also alleged that although the Tribunal quashed the original panel and ordered for fresh panel on the basis of guidelines laid down by the Tribunal, the respondents authorities did not pay any heed to the same. It is their further contention that the respondent authorities did not quash the appointments of those persons, who were not included in the final panel but were given appointment irregularly and illegally, as per order of the Tribunal on extraneous consideration. Instead, the respondent allowed such persons to continue in service as Substitute D/2 Khalasi against additional vacancies without considering the case of the applicants, who appeared in the selection test. On the other hand, the respondents further perpetuated the irregularity by regularising such large number of substitute Khalasis

who were irregularly appointed initially by issuing orders dated 7.1.94 and 14.10.93 as per annexures D and E to the present OA.

4. It is the case of the applicants that although the respondents allowed such unsuccessful candidates not only to continue in service as substitutes even after the orders of this Tribunal quashing such appointments, they have also regularised their service without extending such benefits to the petitioners. This, according to the petitioners, is an act of gross discrimination against them vis-a-vis those persons as named in annexures-D and E respectively. Being

aggrieved, they have filed the instant OA praying for the reliefs quoted above.

5. The respondents have contested the claim of the petitioners by filing a written reply to which a rejoinder has been filed by the petitioners. The respondents have not denied that the original panel prepared by them in connection with the employment notice of 1985 relating to appointment to 400 posts of D/2 Khalasis had been quashed by this Tribunal by its order dated 7.9.90 passed in OA 728/89. However, in the meanwhile several appointments were also given on the basis of such quashed panel. Considering the position, the Tribunal allowed the respondents to accommodate such persons appointed irregularly against other posts, which may be available. It is also not denied by the respondents that by an order passed in contempt petitions Nos. 77/90 and 35/91 the Tribunal gave the aforequoted directions by which the respondents were directed to prepare a fresh panel of 400 candidates after calling the first 2000 persons qualified in the written test and further to cancel the appointments given irregularly to those persons who were appointed irregularly on the basis of first panel. However, liberty was given to the respondents to provide such persons with alternate employment without affecting the rights of the candidates to be appointed from the fresh panel to be prepared. It is the case of the respondents that after the aforesaid order was passed, they cancelled the appointment of such irregularly appointed persons by order dated 9.3.92 as per annexure-R1 to the reply. However, in terms of the liberty given by the Tribunal, such persons were allowed to continue to work as Substitutes. It is also their case that as per guidelines fixed by this Tribunal in the judgement passed in OA 728/89, they have prepared a fresh panel of 400 persons (SC 68, ST 32 and UR 300= total 400) vide order dated 5.5.92. A copy of the said panel has been produced before us. Regarding the claim of the petitioners that they should also be given appointment as Substitute as has been given to unsuccessful candidates, it is the case of the respondents that such persons were initially appointed on


the basis of the earlier panel since quashed. But in view of liberty granted by the Tribunal they have been accommodated as Substitute. The present petitioners, though appeared in the written test and called to viva voce test, could not qualify in the first panel and hence they were never appointed. Therefore, the present petitioners are not similarly circumstanced with those persons who were initially appointed irregularly on the basis of first panel and later given alternative appointment as Substitute. Further, the respondents have taken the point of limitation. According to them the petitioners have filed this application in 1996 whereas the persons with whom they are claiming parity were appointed long back and were regularised as Substitutes as per railway rules. Further they have also taken a point that these petitioners have earlier filed different applications viz. OA 508/92, 514/89, 26/92, 195/90, 285/90 and 578/89 claiming similar reliefs which were not allowed. Therefore, the present petition is barred by the principles of res judicata. The respondents have, therefore, prayed for rejection of the instant OA.

6. We have heard the learned counsel for both the parties in some details. The respondents have produced before us the relevant departmental records which we have carefully gone through.

7. The basic facts disclosed in this case are not disputed by either parties. It is admitted that initially in response to the employment Notice published by the respondents for forming a panel of candidates for filling up 400 posts of D/2 Khalasi, the applicants also applied along with several others. They qualified in the written test and were called to viva-voce test vide call letters annexed to the rejoinder. However, they did not find place in the earlier panel. However, on being challenged by some unsuccessful candidates, the Tribunal quashed the said panel and directed the respondents to prepare a fresh panel from the stage of interview in accordance with the guidelines framed by this Tribunal. However, in the meantime, several appointments had already been given by the respondents which were held to be irregular. In the order passed in the contempt

petitions the Tribunal directed the respondents to cancel such appointments. However, considering that such persons had already worked for a considerable period, liberty was given to the respondents to provide alternative employment to such persons. On the basis of such liberty these persons were given alternative appointment as Substitutes which was different from the advertised posts. The principal grievance of the present petitioners lies here. They claim that such persons were all either outsiders or could not qualify in the selection. Therefore, they cannot be given alternative appointment as Substitutes without considering the case of the petitioners, who at least qualified in the written test and called for viva-voce test. In support of their contention; the petitioners have annexed at annexure-C a copy of letter dated 3.3.93 issued by the Rly. Board addressed to the respondent authorities wherein certain clarification was sought regarding 117 outsiders in the panel of 400 non-working Khalsis. It is pertinent to mention here that the petitioners have not challenged the second panel in this OA. Therefore, any defect or irregularity in the second panel is beyond the scope of adjudication in this OA without adequate materials. The petitioners have also annexed at annexures-D and E certain office orders dt. 7.1.94 through which 228 substitutes have been sought to be regularised in Group D posts after screening and dated 20.10.93 by which directions were issued for screening test of 233 substitutes. The petitioners contend that while such large number of persons were regularised by the respondents, they have been denied such opportunity. From enclosure to annexure-D, we find that at least 228 persons, who were appointed as substitutes in between November, 1988 and October 1990, have been declared to be suitable after screening for regularisation in Group D posts. It is not denied by the petitioners that they were never appointed either as Substitute or otherwise under the respondents at any point of time. The respondents have contended that the substitutes were regularised as per rules of the railway after screening against available posts. They did not

occupy any of the 400 vacancies notified in the 1985 employment notice referred to above. Therefore, the case of these substitutes stand on a different footing altogether. Since the petitioners were never appointed as substitute, they cannot lawfully raise any objection against such regularisation. It is not the case of the petitioners that they were included in the panel prepared either initially or thereafter on the basis of judgement of this Tribunal for appointment against 400 vacancies of D/2 Khalasi. On the other hand, it is contended by the respondents that on the basis of marks obtained by the petitioners in the written test, they did not come within first 2000 candidates called for viva-voce test as per order of the Tribunal. The only contention of the petitioners is that while the respondents have appointed so many unsuccessful candidates or outsiders as substitute irregularly or otherwise, they (the petitioners) should also be given such appointment as substitute. It is not clear from the averments made in the OA as to whether the petitioner ever applied for appointment as substitute or whether, if so, what happened to their such applications. As already pointed out such substitutes were appointed long ago in between 1988 and 1990. If the applicants had any grievance against their non-appointment as substitute like the aforesaid 228 persons, they could have approached this Tribunal earlier. Regularisation of such substitutes is a different matter as the railway rules clearly stipulates the procedure of regularisation of substitutes or casual workers after attaining temporary status. This has no relation to the employment notice of 1985 for recruitment to D/2 Khalasi and the panels prepared on the basis of selection process initiated thereunder. The first prayer of the applicants is for direction on the respondents to give them appointment as D-2 Khalasi as has been given to other persons whose appointments were cancelled by order of the Tribunal. It is clear from the above disucssion that such persons were not appointed as D/2 Khalasi against the notified 400 posts after their initial appointment on the basis of first panel was cancelled in terms of the order of



this Tribunal. From annexure-R1 to the reply, we find that the respondents authorities issued an order on 9.3.92 cancelling all appointments made on the basis of quashed panel. However, the appointees were allowed to continue to work as substitutes. As already pointed out that the present petitioners were never appointed under the respondents and therefore they are not similarly circumstanced like the persons who were given alternative appointment as substitute when their initial appointments were cancelled in terms of the order of this Tribunal. Our attention has been drawn to a judgement of this Tribunal dated 24.4.95 passed in OA 409/94 (Jay Narayan etc. -vsUOI). In that case also similar prayer was made as made by the present petitioners by some other persons and the Tribunal rejected such prayer. In view of the above, we find no justiciable cause requiring intervention of this Tribunal. Accordingly, we are unable to allow the first prayer of the applicants.

8. Now we come to the second prayer made by the petitioners. They have prayed for quashing the order dated 7.1.94 (annexure-D) and memo dated 14.10.93 (Annexure-E). We have already referred to these orders above. By order dt. 7.1.94, the respondents have published a list of 228 substitutes who have qualified in the screening test for regular appointment as Group D posts. By Memo dt. 14.10.93, the respondent authorities have published a list of 233 substitutes asking them to appear for screening test. It is not understood as to why the petitioners have prayed for quashing of these two orders. As already discussed above, in the first prayer the petitioners have prayed for appointment as D/2 Khalasi as has been given to some other persons who did not qualify in the selection test or were rank outsiders. As it appears, the petitioners' contention is that these 228 persons have been given appointment through back door by the respondents over and above the 400 declared vacancies of D/2 Khalasi whereas they have been left out from such consideration. It is surprising that while the petitioners on the one hand want to quash such regularisation of these 228 substitutes, on the other hand they also want similar appointment.

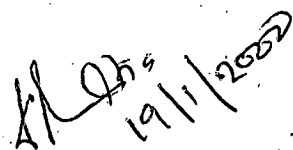
Moreover, these persons have not been made parties to this proceeding and any order passed behind their back without hearing them will seriously prejudice their rights. There is also no particulars in detail about these 228 persons. It is the consistent claim of the respondents that those persons, who were given appointment as D/2 Khalasi on the basis of earlier panel, which was subsequently quashed by this Tribunal, have been provided with alternative appointment as Substitutes in terms of the liberty granted by this Tribunal. Thereafter, by working as substitutes for a considerable period, they acquired right for regularisation in accordance with railway rules and in terms of those rules, they were screened and subsequently regularised. There is no denial that these persons were initially appointed irregularly as was noticed by this Tribunal while deciding contempt petitions arising out of OA 728/89. But even then the Tribunal gave liberty to the respondents to accommodate such persons against other available vacancies. We have also pointed out that such persons were all appointed in between 1988 and 1990. Even though their initial appointment was considered as illegal, they were allowed to continue as substitutes for a long time and by dint of working as substitutes for years together, they have been made regular by following the relevant rules. After all these years, we do not consider it fit and proper to examine their case afresh, particularly when these persons have not been impleaded in this OA as parties. We are, therefore, unable to accede to this prayer of the petitioners as well.

9. In view of the above discussion, we are unable to grant any relief to the petitioners. Accordingly, the application is dismissed without passing any order as to costs.



(G.S. MAINGI)

MEMBER(A)



(D. PURAKAYASTHA)

MEMBER(J)