

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION : 12.4.90

P R E S E N T

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION NO.421/89

K.Achuthan .. Applicant

v.

1. Union of India represented by the
General Manager,
Southern Railway, Madras.
2. The Divisional Personnel Officer,
Southern Railway, Trivandrum.
3. Inspector of Works,
Southern Railway, Trivandrum.
4. The Senior Divisional Engineer,
Southern Railway, Trivandrum.

.. Respondents

Mr P.K Madhusoodhanan

.. Counsel for the
applicant

Smt.Sumathi Dandapani

.. Counsel for the
respondents

J U D G M E N T

Hon'ble Shri N.Dharmadan, Judicial Member

The applicant joined the Railway as Casual Labourer Artisan on 21.4.80. He has been granted temporary status on 21.8.80. He is working in the skilled grade as Brick Layer without any break in service for the last eight and a half years. He has also passed the trade test. According to him he is fully eligible for screening and is entitled to continue in the skilled vacancy. The respondents ought to have absorbed the applicant in the Department.

2. But the second respondent as per Annexure 1 compelled the Casual Labourer/artisans who obtained temporary status and ^{are} working in skilled grade to give

option either to continue as Casual Labourer/artisans till such time when sanction is received to be empanelled on for appointment in Group D category as Gangman in the scale of Rs.775-1025 against newly sanctioned posts.

The applicant objected to this by filing representation Annexure II. In spite of the objections the respondents are compelling the applicant to go as Gangman and they are taking hasty steps to send the applicant as Gangman.

Hence he filed this application with the following reliefs:-

- i) The applicant prays that the respondents may be restrained from disturbing the applicant from the posts which he is holding now.
- ii) Respondents may be directed to regularise the service of the applicant as Skilled artisan by resorting to decasualisation of the post which he is holding now.
- iii) Award costs of the applicant in this proceedings; and
- iv) Grant such other and further reliefs as may be prayed for.

3. The respondents have filed a counter affidavit and contended that Casual Labourers of Civil Engineering Deptt. can be empanelled only as Gangman and as far as artisan/skilled Casual Labourers are concerned the quota prescribed for recruitment is 25% of 50% and it would work out to $12\frac{1}{2}$ % of the total vacancies occurring during the relevant year of empanelment. No vacancy could be found out against this 25% of 50% of the total vacancies set apart for absorption of artisan/skilled Casual Labourers. Hence there is no chance left to the applicant being straight away empanelled as Brick Layer.

4. When the case was taken up for hearing the learned counsel for the applicant submitted that this case is squarely covered by the judgment of this Tribunal in OA 398/89. But the learned counsel for the Railway, on the other hand, submitted that the case is governed by the judgment in OA 45/89 and OA 324/89. We have gone through

all the judgments referred to above. The main issues involved in all the above cases are the same.

5. The Tribunal has very recently considered and disposed of ^{an} identical matter in O.A 613/89 after discussing the issues in greater detail. In that case we have held as follows:-

" However, we are of the view that the present case should be considered and disposed of on the footing that there is no rule or regularisation whatsoever, stipulating the manner in which regular vacancies of Khalasis have to be filled up. We are only guided by the principles and procedures laid down by the Supreme Court on the subject.

20. That being the position, we are persuaded to accept the line of reasoning adopted in the later judgments delivered by this Bench i.e. in TAK 328/87 , OA 8/89 and OA 210/89 because of the following important considerations:

- (i) The posts of regular Khalasis have been created in the context of de-casualisation with a view to regularisation of casual labourers by absorbing them to these posts.
- (ii) The post of Khalasi is the lowest in the hierarchy as its pay scale is less than that of a Gangman and the recruitment should normally be on the lowest post. Therefore, casual labourer should be appointed as Khalasis.
- (iii) Granting for arguments sake that the time honoured practice referred to by the respondents has a legal basis, a situation can as well arise in which sufficient number of regular Gangmen may not be available to fill up all the posts of Khalasis and casual labourers in the Waiting List for regularisation may not be willing to go as Gangmen. Hence posts of Khalasis may remain unfilled. In that case, it would become inevitable to appoint casual labourers directly as regular Khalasis."

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" Keeping these considerations in view, we find that the judgment delivered in TAK 325/87 and OA 210/89 can be followed for the disposal of this case with the further clarification that in the matter of inter-se seniority as between casual labourers appointed as regular Khalasis and regular Gangmen appointed as regular Khalasis, the latter should be treated as senior in this regard considering the fact that they had been regularised earlier in the Railway".


6. We feel that interest of justice would be better served if we follow the judgment in the above case and dispose of this case with the same directions. Accordingly we dispose of this case with the following directions:-

- (a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance, be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation;
- (b) The regular post of Khalasis may be offered to such casual labourers in the Divisional seniority list who are waiting for regularisation. But if any casual labourer is not willing to be absorbed as Khalasi, it can be presumed that he is not interested and he cannot later claim any higher seniority over any of his juniors who have accepted the post of Khalasi and thus got regularisation from an earlier date. All casual labourers should be warned in advance about this.
- (c) If on this basis, it is found that there still remain vacancies of Khalasis created in connection with the de-casualisation scheme, these vacant posts can be filled up as a residuary measure by calling volunteers from regular Gangman and by conducting aptitude test amongst them.
- (d) The inter-se seniority as between the casual labourers appointed as regular Khalasis and regular Gangmen appointed as regular Khalasis shall be determined from the date from which the persons were first regularised either as Gangmen or as Khalasis.
- (e) This order, however, will not apply to the filling up of normal vacancies of Khalasis which arise due to retirement, promotion, death, etc. of the regular incumbent. Such vacancies can be filled up by the respondents by calling


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for volunteers from regular Gangmen. The Gangmen so inducted will count their seniority from the date they were first regularised as Gangmen.

7. There will be no order as to costs.


12/4/90

(N.DHARMADAN)
JUDICIAL MEMBER


12-4-90

(S.P. MUKERJI)
VICE CHAIRMAN

n.j.j

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

R.A No.79/90 (O.A. No. 421/
T.A. No.

198 89

DATE OF DECISION 20.7.1990

Union of India, represented by Applicant (s)
the General Manager, Southern Railway, Madras & 3 others

Smt. Sumathi Dandapani Advocate for the Applicant (s)

Versus

K.Achuthan Respondent (s)

Mr. P.K Madhusoodhanan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

In this Review Application filed by the Railway, the respondents in O.A 421/89, the limited request made, owing to the difficulty in implementing the directions in the judgment, are as follows:-

- (i) The directions contained in clauses (a) and (b) in the operative portion of our judgment dated 12.4.1990 may be limited to the casual labourers who have been empanelled on the basis of screening for regular absorption on divisional seniority.
- (ii) Necessary provisions may also be included in the directions in clauses (a) and (b) for conducting an aptitude test among the casual labourers who volunteer for being absorbed as regular Khalasis.
- (iii) The seniority referred to in clause (e) of the direction should be clarified as the seniority in the post of Khalasi on the basis of the date of absorption as Khalasi.

2. These grounds are strongly opposed by the respondent, the applicant in the Original Application. According to him there is no difficulty for implementing the directions in the judgment and no error on the face of the record and that the review petitioners have not made out any case for interference by way of review. If this petition is allowed, they will be deprived of the reliefs already granted by the judgment.

3. We have considered the contentions of both the parties. *after condoning his delay and allowing MP 496/90.* In the course of the argument it was also suggested by the learned counsel for the review applicants that the aptitude test mentioned in clause (c) of last para would be made applicable to Khalasi also.

4. We see considerable force in the request made by the applicants in the review petition. The clarification sought for in this petition are only very minor and deserve consideration especially because the Railway is finding some difficulty in the actual implementation of the directions. Even though there is no error apparent on the face of the record as alleged by the applicant in the Original Application, in the interest of justice, we are of the view that slight changes in the last but one paragraph of the judgment are required, which we think can be incorporated without in any manner affecting detrimentally the rights of the applicant.

5. Accordingly we are inclined to effect the following changes and additions in the last but one paragraph of the judgment:

- (i) In clause (a) of that para of the judgment after the word 'regularisation', the following may be added viz. 'according to their seniority in the Division and after subjecting them

to an aptitude test'.

- (ii) In clause (d) after the word 'regularised' the words 'either as Gangmen or' be deleted.
- (iii) For the last sentence of clause (e), the following sentence may be substituted. 'The Gangmen so inducted will count their seniority from the date they were absorbed as Khalasis.'


6. After incorporating the above changes, clause (a), (d) and (e) of the original judgment will read as follows:-

- "(a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation according to their seniority in the Division and after subjecting them to an aptitude test.
- (d) The inter-se seniority as between the casual labourers appointed as regular Khalasis and regular Gangmen appointed as regular Khalasis shall be determined from the date from which the persons were first regularised as Khalasis.
- (e) This order, however, will not apply to the filling up of normal vacancies of Khalasis which arise due to retirement, promotion, death etc. of the regular incumbent. Such vacancies can be filled up by the Respondents by calling for volunteers from regular Gangmen. The Gangmen so inducted will count their seniority from the date they were absorbed as Khalasis. "

7. The Review Application is allowed to the extent shown above and the judgment passed by us in this case on 12.4.1990 is reviewed and modified as above. The modified copy of the judgment may be issued to all parties in this case.


(N. DHARMADAN)
JUDICIAL MEMBER

20.7.90


(S.P. MUKERJI)
VICE CHAIRMAN

20.7.90