

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 472/93

Thursday, this the 3rd day of February, 1994

SHRI N. DHARMADAN, MEMBER (J)
SHRI S.KASIPANDIAN, MEMBER(A)

M.Dinesan,
Koothattu House,
Pattuvam PO, Taliparambu,
Cannanore.

.. Applicant

By Advocate Shri P.Sivan Pillai

V/s

1. Union of India through
The General Manager,
SR, Madras-2.
2. The Chief Personnel Officer,
SR, Madras-3.
3. The Divnl. Personnel officer,
SR, Trivandrum-14.
4. The Divnl. Personnel Officer,
SR, Palghat.
5. V.Viswan, Khalasi, through
Divnl. Personnel Officer,
SR, Palghat.

.. Respondents

By Advocate Shri P.A. Mohammed (Resp. 1 to 4)

ORDER

N. DHARMADAN

Applicant is a casual employee belonging to S.C. community. He has been selected for appointment to Group-D posts in the Trivandrum/Palghat Division of the Southern Railway. After a process of selection, the applicant was empanelled along with 150 others in Annexure-A1, provisional select list of SC/ST casual employees to be appointed in the Group-D cadre in the above Divisions. In Annexure-A1 dated 10.12.89, the applicant is at serial No.120. According to applicant out of these total 150

candidates, except nine including the applicant, all others were appointed in various places in the above Divisions. Applicant was denied actual appointment, notwithstanding the offer to absorb him during the pendency of OA 767/91 and OA 990/92. After the dismissal of these cases the applicant filed Annexure-A2 representation dated 15.12.92. That representation was not considered and disposed of so far. Nor was he given appointment even though many of his juniors were appointed. Under these circumstances he has filed this O.A. for a direction to the respondents to appoint him in Group-D grade to which he is eligible to be absorbed taking into consideration his medical categorisation.

2. O.A. 767/91 was filed by a group of retrenched casual labourers in the Civil Engineering Department challenging appointment orders which were issued pursuant to Annexure-A1 list. That case was allowed as per judgment dated 6.2.92 directing the respondents to consider the applicants therein along with other S.C. retrenched casual labourers like them on the basis of their seniority. It was made clear in that judgment that the number of short fall vacancies in Group-D shall not be treated as diminished by appointment of direct recruits on the basis of the impugned orders. In other words the orders challenged in that case were not quashed nor was there any finding in the judgment that the direct recruits included in Annexure-A1 list are not entitled to appointment. In fact it was made clear that respondents will have the freedom to terminate the services of existing employees in accordance with law if it becomes necessary. When a proposal for termination came, some of the casual employees coming within the category of direct recruits, who were recruited for appointment in regular

Group-D vacancies filed OA 990/92 and connected cases. All these cases were heard and disposed of by a common order dated 17.11.92 in which it is stated as follows:-

"11. The fact that the Division Bench made it clear "that the number of short fall vacancies in Group D shall not be treated as diminished by appointment of direct recruits by orders like Annexure-A6 as such appointments are irregular, and will not affect the requests of the applicants for absorption" shows that the Railway Administration was given the liberty to implement the judgment without dislodging the direct recruits.

12. Further, the applicants in OA 767/91 neither made the direct recruits a party nor did they challenge the appointments of the direct recruits at Annexure-A6 therein. As such, that judgment cannot be invoked to terminate the services of the applicants before us.

13. More importantly, the applicants in OA 767/91 belonged to the Civil Engineering Department and they claimed absorption in the Civil Engineering Department of the Trivandrum Division. Thus, the judgment given in that case even in an extreme view cannot be invoked in any other department of the Trivandrum Division, like the Mechanical, Electrical, Signal cum Telecom and the Railway Administration cannot at all be held to be bound to dispense with the services of the direct recruits in those other departments."

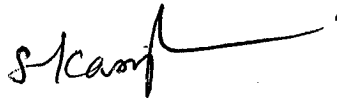
3. Applicant filed representation, Annexure-A2, after disposal of the above two original applications. According to applicant, the judgment in OA 767/91 applies to the Civil Engineering Department. The applicant is not seeking engagement in that Department. He can be considered for appointment in any of the vacancies of Khalasi in the Mechanical/Electrical/Signal/Telecom Department of the Railways.

4. When the applicant was sent for medical examination on the basis of offer of appointment it was found that applicant was not fit to be appointed as Gangman. He was medically fit for B-2 category and considering the medical classification he can be appointed as a Khalasi. None of the judgments produced before us prevents the Railways from considering the applicant for appointment to the post of Khalasi in the departments, other than Civil Engineering

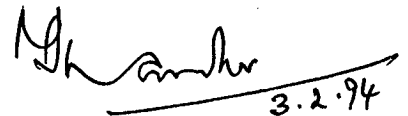
Department. Hence, we do not find any justification for denying appointment to the applicant as Khalasi considering his rank and seniority in the select list, particularly when many of his juniors have been given appointment.

5. Accordingly, having regard to the facts and circumstances of the case, we dispose of the application directing the third respondent to consider the claim of the applicant for appointment as Khalasi in any department other than Civil Engineering Department, if he is otherwise suitable for the post, bearing in mind the above observations. He may also dispose of Annexure-A2 representation.

6. The application is dispose of as above. There will be no order as to costs.



(S.KASIPANDIAN)
MEMBER (A)



(N.DHARMADAN)
MEMBER (J)

v/-