

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE: 28-5-92

O.A. 249/91

N. Doraisamy and  
six others

Applicants

Union of India through  
the General Manager,  
Southern Railway,  
Madras-3 and others

Respondents

O.A. 583/91

Kutty Asan P.C. and two  
others

Applicants

Union of India through the  
General Manager, Southern Railway  
Madras-3 and others

Respondents

Mr. P. Sivan Pillai

Counsel for the  
applicants in both cases

Smt. Sumathi Dandapany

Counsel for R 1-3 in  
O.A. 249/91 &  
R 1-2 in O.A. 583/91

Mr. P.K. Madhusoodhanan

Counsel for R-4, 5, 8,  
10 to 18 in O.A. 249/91

PRESENT

HON'BLE MR. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR. N. DHARMADAN, JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

These two applications were heard together by consent of parties and we are of the view that these applications can be disposed of by a common judgment because the facts and the issue arising for consideration are identical. For convenience, we deal with the facts in O.A. 249/91.

2. The applicants are Electrical Khalasis/Khalasi helpers working in the Electrical Department of the Trivandrum Division of the Southern Railway. Except the fifth applicant,

who has passed ITI, all the others are SSLC failed/in candidates regard to the educational qualification. Applicants 1 & 5 are working in the Department from 1982, and others from later dates.

3. The applicants are attacking the proposal of the Railway to fill up the vacancies of AC Khalasis in the Electrical Wing with qualified candidates from other units fixing SSLC with three years experience as minimum qualification. as per Anns. A5 & A6.

4. According to the applicants, Electrical Department of the Railway consists of three wings namely, Train lighting, Power and A.C. The method of filling up of the vacancies of group-D posts in these Wings was by calling volunteers from/ Electrical Deptt. and considering suitability of employees from among them. This practice was in force from the very inception and Annexure A-2 is produced to support this practice followed by the Railway.

5. They have also produced Annexure A-3 notification dated 28.11.90 inviting application from serving regular employees of Traffic Department for posting as Artisan Khalasis in the scale of Rs. 750-940. This is produced to prove the case of the applicants. They have produced Annexure A-4 "avenue chart" of AC cadre to substantiate their cases that the vacancies of Khalasis in the A.C. cadre can only be filled up with persons working in the Electrical Wing and to establish that the prospect of career advancement in the A.C. cadre is faster than in other Wings. When 38 vacancies of A.C. khalasis were notified as per Annexure A-2

the respondents did not take further steps to fill up the vacancies following the earlier procedures, but issued a further notification Annexure A-5 calling volunteers from Khalasis working in other Departments, contrary to the instructions and Annexure A-4 'avenue chart.' The Railway had fixed a minimum educational qualification of SSLC plus aptitude to work in xxx A.C. Wing. A further notification Annexure A-6 was also issued fixing three years service in the A.C. section, at x one time of other xxxx as the requisite criteria for selection. According to the applicants, the proposal to bring in employees from outside the Electrical Wing fixing the minimum qualification of SSLC with three years experience xx deprive the chance of the applicants who are already working in the Electrical Wing to get a posting in the existing vacancies of A.C. Wing. Accordingly, they have submitted Annexure A-7 series of representations, but the respondents have not disposed of the same. The applicants contended that the Indian Railway Establishment Manual fixes the minimum qualification prescribed for group-D post. The relevant portion of the Manual as quoted in the application reads as follows:

"iv. Academic qualifications, Literacy as a qualifying condition:

- (a) Should be insisted upon only for those categories for which it is essential for the proper execution of duties. Literacy should be taken to mean ability to read and write simple sentence in any language. It is not necessary to relate it to passing a prescribed examination or standard. The minimum standard need not be the same for all class IV services. It would have to be higher for a Fireman and later as a Driver than say for a Khalasi.



under examination of the Railway from 1985 considering the changed circumstances. The Railway Accident Enquiry Committee recommended that in the lowest recruitment grades in group-D category, a minimum educational qualification will be fixed. In its recommendation No. 10 (in para 10 of their Report) the Committee recommended that xxx basic literacy may be prescribed in the recruitment standard for all staff irrespective of the category, including casual workers. Annexure R-1 is a copy of the Railway Board's order dated 16.8.85 passed in this behalf. The relevant portion dealing with consideration of the matter is extracted below:

"In the context of increasing sophistication in Railway Technology and modernisation of its operations, the question of prescribing minimum educational qualifications for group-D(class-IV) recruitment on the Railway has been under consideration of this Ministry for some time past. The Railway Accident Enquiry Committee, 1978 had recommended that in the lowest recruitment grades in group-D(class-IV) category, including casual labour only persons with minimum educational qualifications should be recruited. Railway Reforms Committee in their Recommendation No. 10 (in part IX of their report in personnel) have recommended that basic literacy should be prescribed in the recruitment standard for all staff irrespective of category including casual labour.

3. The matter has been carefully considered by this Ministry inter alia, in the light of the above mentioned recommendations. It has now been decided that for recruitment/appointment to group-D posts, the minimum educational qualification should be as under:

- i) In future casual labour and substitutes will be eligible for absorption in vacancies (other than those of Safaiwalas) in all the wings of the Electrical and Mechanical Departments and in the Workshops of S & T Department only if they have the minimum qualification of ITI or they are course completed Act Apprentices.
- ii) For recruitment of Khalasis in the Diesel/Electric Loco/EMU Shed etc., the instructions contained in this Ministry's letter Nos. E (NG) II/80/RCI/75 dated 31.5.85 will continue to apply.
- iii) (a) For recruitment to vacancies (other than those of Safaiwalas) in all other wings

(including workshops) of the Electrical/ Mechanical Departments and in workshops of S & T Department, the minimum educational qualifications will be ITI on completion of a course under the Apprentices Act.

(b) The minimum qualifications for posts of Khalasis in S & T Department (i.e. for other than S & T workshops) will be a pass in the tenth standard."

7. Further orders Annexure R-2 to R-4 were issued stating that the qualification for the Khalasis to be taken to the A.C. Wing shall be pass in SSLC as the minimum qualification considering the fact that they have to deal with a number of disciplines in addition to refrigeration. are 4 -  
Annexure R-2 to R-5/orders issued in this behalf. The latest letter issued by the Railway is Annexure R-6. This letter fixes priority of absorption from Khalasis in the following manner:

"Taking all the factors into consideration, it has since been decided that the priorities of absorption of Khalasis in AC wing shall be as under:

- i) Regular Khalasis working in TL and power side, who have got the requisite SSLC qualification and have volunteered to come to AC section
- ii) Regular Khalasis in TL and Power side with 8th Std. passed and above but not SSLC and who volunteered to come to AC section and had put in 3 years of service in the AC section at one time or the other, as a one time exemption.
- iii) CPC Khalasis being empanelled with SSLC qualification volunteering to work in AC Section.
- iv) CPC Khalasis who are being empanelled and who have passed 8th Std. and above but not SSLC and who have put in more than 3 years of service in AC section as a one time exemption.

Note: The 3 years of service mentioned above includes service as temporary status Khalasis in the AC side.

2. As and when vacancies become available in the A.C. Section, they are to be filled up according to the above priority. It should be ensured that there will not be any excess operation of cadre in the AC Section. The CPC Khalasis who are now working in the AC wing should, in the reverse order of seniority, be transferred to the Train Lighting or power side or General services wherefrom the volunteers have been absorbed. This principle should be followed strictly."

8. The fixation of qualification for a post is exclusively within the powers of the administrative authorities who are better informed about the working and necessity of each department. When they have fixed the qualification taking into consideration the relevant aspects, the courts/tribunals could not interfere in such fixation unless it is shown that the fixation itself is malafide and arbitrary with ulterior motive.

9. In the instant case, the apprehension of the applicants is that by inducting persons from outside the Electrical Department with additional qualification, their chance will be reduced. But taking into consideration the change in the circumstances and the decision taken by the appropriate authorities <sup>the</sup> ~~the~~ criteria for selection cannot be set aside/merely on the ground that the chance of promotion to the employees ~~xx~~ is reduced or affected adversely. So the contention of the applicants based on their apprehension cannot be appreciated and given much weight.

10. Further arguments advanced by the applicants is based on the minimum qualification fixed by the Railway Establishment Manual for group-D employees and Annexure A-3 series. The Manual which came into existence in 1963

contemplates literacy and standard of employees in the lower category having regard to the circumstances and position prevailing at that time. The subsequent changes and sophistication in each department will have to be separately dealt with and the power of the Railway Board to take appropriate decision having regard to the changed ~~xx~~ circumstances <sup>in</sup> each Department, cannot be ignored simply relying on the provisions of the Railway Manual pressed in to service by the learned counsel for the applicant.

11. The respondents 1 to 3 in their reply statement do not specifically deal with Annexure A-8 series, but they relied on ext. R-1 to R-3 and contended that the staff in the AC unit have to deal with a number of discipline in addition to refrigeration and hence the minimum educational qualification of SSLC/Matriculation should be insisted <sup>upon</sup> ~~for~~ absorption and posting of Khalasis in A.C. Wing of the Electrical Branch. In the reply statement filed by respondents 4,5,8,10 to 18 they have stated that the Annexure A-8 series applicable only to casual service and literacy is not insisted upon in their case.

12. The first letter Annexure A-8 (A-8(i) is dated 4.9.86. It discloses the decision of the Railway Board dealing with the question of minimum educational qualification for group-D (class IV posts) <sup>and the</sup> ~~stay~~ in regard to the decision referred to in Ext. R-2 dated 16.8.85, by which the qualification for the Khalasis to be taken in the A.C. Wing has been fixed as pass in SSLC. The further letter



Annexure A-8 series (A-8(2)) dated 19.11.86 contained the order modifying the stay referred to in Annexure A-8(1)

Para 2 of the said letter reads as follows:

"In this connection attention is invited to para 3 (ii) of Board's letter dated 16.8.85 cited above in which it was enjoined that for recruitment of Khalasis in the Diesel/Electric Loco/EMU sheds, the instructions contained in Board's letters of 28.1.83, 31.12.83 and 31.5.85 will continue to apply. It is hereby clarified that the instructions contained in the Board's letter No.E (NG)II/80/RC1/7 dated 28.1.83 E(NG) II/83/RC2/39 dated 32.12.83 and E(NG)II/83/RC-2/75 dated 31.5.85 will continue to be applicable, notwithstanding issue of Board's letter of 4.9.86 quoted above."

Annexure A-8 series (A-8(3)) letter dated 14.4.88 emphasis that Ext. R-2 was kept in abeyance temporarily pending review of the qualification specified therein. The Railway Board's letter dated 20.1.83, 31.12.83 and 31.5.85 will continue to apply after Annexure A-8 series (A-8(2)) dated 19.11.86. Ext. R-1 letter refers to Board's letters dated 31.12.83, 18.6.83, 21.8.83 and 31.5.85 fixing the minimum qualification for the post of Khalasis for their absorption in the Diesel/Electrical/Loco/EMU shed. A combined reading of Ext. R-1, R-2 and R-3 with Annexure A-8 series it can be seen that the fixation of minimum educational qualification for posting of persons as Khalasis in the A.C. Wing of the Electrical Branch will prevail and can be insisted upon as contended by the respondents.

13. The statement of the applicants that the practice of filling up posts of A.C. Khalasis without insisting upon

the educational qualification was followed by the Railway has been specifically denied by the respondents in their reply statement. The minimum educational qualification was fixed as one of the conditions for recruitment for the post of A.C. Khalasis from the year 1985. This is clear from Annexure A-2 notification and the statement of Respondents 4, 5, 8, 10 to 18 in their reply statement. The relevant portion is extracted below:

" Volunteers were called in 1984, 1986 etc. and selection was conducted. Casual Labourers/ substitutes from all departments who are having the required qualifications were allowed to take part in the aptitude test and interview and those found selected were appointed.

14. The same educational qualifications were prescribed in the selection conducted in the year 1987-88 and subsequent years. The second respondent has selected and posted as A.C. Khalasis a number of persons having the minimum educational qualification of SSLC. The applicants who were working in the Electrical Wing did not raise any objection against the fixation of educational qualification from 1985 onwards and calling volunteers and conducting aptitude test for absorption of Khalasis in the A.C. Unit. Therefore, they are estopped from raising objections against fixation of qualification of SSLC in the Annexure A-5 notification.

15. Respondents 5, 8, 11, 13 and 18 were working in the Electrical Department from their initial engagement. They have passed SSLC except R-11. They have applied for the post of A.C. Khalasi in response to Annexure A-6

circular and were selected and posted as A.C. Khalasis in the A.C. Wing. The other respondents were also selected and posted as A.C. Khalasis.


16. The respondents have stated in the reply statement that Annexures A-5 and A-6 have been issued under the guidelines governing the recruitment to the post of A.C. Khalasis and the request of the staff through their recognised trade unions and the said procedure has been issued only as one time measure for filling up the vacancies arising upto 1.3.91. Out of the applicants, the fifth applicant who is an I.T.I. holder has been screened and empanelled and it is only after exhausting all the educationally qualified hands in the Electrical Department that the Railway decided to bring in persons from other departments having minimum qualification. The Tribunal has upheld the absorption of volunteers from other wings in the A.C. Wing in O.A. 7, 8 and 111/91.

17. Having regard to the change in the circumstances and the facts of this case, it cannot be said that the action of the respondents in bringing experienced persons with additional qualification from other departments to the A.C. Wing is illegal as alleged by the applicants. It being one time measure, adopted in the exigency of service, there cannot be any grievance for the applicants, particularly when the recognised trade unions requested to adopt this policy and the Railway had accepted the request.

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18. In the light of the foregoing discussions, the application is only to be dismissed. Accordingly, I do so.

19. There will be no order as to costs.

  
( N. Dharmadan )  
Member(Judicial)

N.V.Krishnan, Administrative Member

I have carefully gone through the judgment of my learned brother and I regret my inability to agree with the conclusions reached by him.

2. The facts of the case have been set out in his judgment and therefore, it is not necessary to repeat them. However, it should be stated at the outset itself that this is a case where the applicants have participated in an examination and, not having been selected, have impugned the selection on the ground that the educational qualification prescribed for the selection is in violation of the standing orders of the Railway Board. The respondents 1 to 3--Railways, for short--have contended that the application is not maintainable on this short ground. Therefore, two questions have to be answered, viz. whether the allegation made in this regard is correct and secondly, even if it is correct, whether the applicants can impugn the selections on that basis, having participated in the examination.

3. In so far as the allegation made in the application about the educational qualification is concerned, I am of the view that the applicants have convincingly proved their case. Admittedly, the posts for which the selection is held (AC Khalasis in the Electric Branch) are Group D posts. Para 5 of the application states the grounds for relief and sub para (b) thereof reads as follows:

"(b). In terms of para (iv) of sub section IV of section B of Chapter 1 of the Indian Railway Establishment Manual the minimum qualification required for Group D posts is literacy only. The said rule reads as follows:-

IV. Academic qualifications, Literacy as a qualifying condition:-

(a) should be insisted upon only for those categories for which it is essential for the proper execution of duties. Literacy should

be taken to mean ability to read and write simple sentence in any language. It is not necessary to relate it to passing a prescribed examination or standard. The minimum standard need not be the same for all class IV services. It would have to be higher for a Fireman and later as a Driver than say for a Khalasi.

- (b) For all other categories literacy should not be insisted upon, but amongst candidates considered suitable for appointment, preference should be given to literate candidates. The standard of literacy required should be taken to mean ability to read and write simple sentences. No standard of literacy will be insisted upon for casual labour.

The Railway Board in terms of their letter No.E(NG)11/84/RRI dated 16.8.85 revised the minimum educational qualification of Group D posts. However, the decision was kept in abeyance by letter No. E(NG)/84/RRI/a26 dated 4.9.86 (RBE 159/86) and followed in letter No. E(NG)11/84/RRI/26 dated 19.11.86 (RBE 222/86) and by letter No.E(NG)/11/88/CL/34 dated 14.4.88. True copies of the letters dated 4.9.86, 19.11.86 and 14.4.88 are Annexure A8 series. The qualification requirement for Group D posts will remain as in para (iv) of sub section IV of the Manual. The applicants are literates. They are, therefore fully qualified for absorption as AC Khalasis according to their existing condition of service. Respondents cannot insist upon a higher qualification and for that reason resort to induction from outside the department ignoring the eligibility and right of the applicants. Annexure A5 is without jurisdiction, illegal and not based on relevant consideration."

4. Admittedly, the Railway Board issued a circular dated 16.8.85 prescribing higher qualification for various posts. That circular has been exhibited by the Railways as Ann.R1. The circular admits that "excepting in a few cases like recruitment of Khalasis in Diesel/Electric locosheds, formal educational qualifications for individual categories have not been laid down by this Ministry for recruitment to Group D (Class IV) post".  
The Railways have <sup>no case</sup> ~~stated~~ that for AC Khalasis, higher qualification of Matric stands prescribed even before Ann.R1 was issued.

5. Though such higher qualifications are prescribed for various posts, it is admitted, that by the Ann.A8 series of orders, the operation of the order dated 16.8.85 (ann.R1) has been kept in abeyance. The applicants have produced in the Ann.A8 series the last letter dated

14.4.88 which refers to keeping in abeyance the Ann.R1 directions prescribing higher qualifications. The Railways have not answered why, despite the letter dated 14.4.88 in the Ann.A8 series, higher qualifications have been prescribed in the impugned orders.

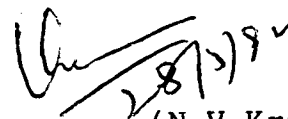
6. The Railways have exhibited Ann.R2 which is a letter dated 16.8.85 from the Headquarters office of the Southern Railway, Madras, which states that the qualification for Khalasis to be taken in the AC side is SSLC pass and therefore, this is the prescribed qualification for the post. There are two objections to this contention. Firstly, when the Railway Board itself has kept in abeyance its circular (Ann.R1) prescribing higher qualifications, as established above, the Headquarters, Southern Railway, Madras, had <sup>no</sup> ~~not~~ business to modify that order. They could have obtained a proper order from the Railway Board removing the ban in respect of AC Khalasis in the Electrical Department. As it is, the first respondent has acted more loyal than the King himself. The second objection is that the prescription in Ann.R2 is not in conformity with the prescription of higher qualification in Ann.R1. The only post for which Ann.R1 prescribes SSLC ~~for~~ Matric pass as the minimum qualification is "posts of Khalasis in S&T Department (i.e. for other than S&T workshops)".

7. I now consider the second question. The dictum that having once participated in an examination, one cannot question it later is not applicable universally. Here is a case where the prescription of higher qualifications in Ann.A6 is unauthorised and without authority. That is a question of law. The applicants can question that prescription despite their participation. The bar to challenge would have applied if Ann.A6 suffered from a procedural irregularity which is not serious. Educational qualification has a basic importance and hence the bar does not apply.

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8. In so far as the other grievance of the applicants is concerned, viz. the casual labourers in the Train Lighting and Power Wings of the Electrical Department alone should first be considered for appointment as regular Khalasis and not others, I am unable to agree. The Ann. ~~A~~<sup>6</sup> memorandum issued by the Headquarters Office of the Personnel Branch of the Southern Railway indicates the priorities in regard to absorption to AC Khalasi post. The first priority is given to Khalasis in the Electrical Department, like the applicants. Therefore, it is the duty of the Railways to first consider the claims of all eligible Khalasis in the Train Lighting and Power side for absorption as AC Khalasis. If, however, ~~there~~ <sup>suitable persons</sup> are not available in sufficient numbers, I am of the view that the Railways are fully empowered to open the selection to similar persons in other Departments also. The learned counsel for the applicant has not drawn our attention to any rule or instruction which prohibits this.

9. In the circumstances, in my view, this application has to be allowed and the Ann.A5 and A6 notices and the Ann.A9 results of the selection have to be set aside and the Railways are to be directed to conduct a fresh selection for AC Khalasi posts, specifying the qualification mentioned in the Manual, referred to in the extract of the application reproduced in para 3 supra and to consider first the claims of the Khalasis in the Train Lighting and Power Wings of the Electrical Department, like the applicants and only if suitable persons are not available can they open the selection to similar persons in other Departments.


  
(N.V. Krishnan)  
Administrative Member



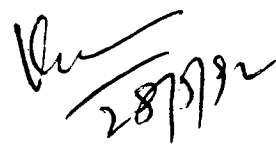
ORDER OF THE BENCH

In view of the difference of opinion between us we refer the following question for decision to the Hon'ble Chairman under the provisions of Section 26 of the Administrative Tribunals Act 1985. The Registry may place the files before the Hon'ble Chairman for appropriate orders:

"Having regard to the facts and circumstances of this case whether the selection made by the Railway for the post of Electrical Khalasi/Khalasi Helpers fixing the minimum educational qualifications and experience is with due authority and whether the operation of the order Ann. R1 dated 16.8.85 has been stayed by virtue of Ann. A8 series."

  
( N.Dharmadan )  
Member (Judicial)

27.5.92

  
( N.V. Krishnan )  
Member (Administrative)

ORDER OF THE BENCH

In the light of the final opinion of the 3rd Member, Hon'ble Shri S.P.Mukerji, Vice Chairman, the impugned orders at Annexures-A5 and A6 are not discriminatory and they do not offend the provisions of law or Constitution of India. Hence, there is no substance in these applications and they are only to be dismissed. Accordingly, we dismiss them. No order as to costs.

( N.DHARMADAN )  
JUDICIAL MEMBER

( N.V.KRISHNAN )  
VICE CHAIRMAN