

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 28.2.1990

PRESENT

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

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 613/89

1. P. M. Balan,
2. P. Sadanandan,
3. T. Remesan,
4. P. Sukumaran,
5. K. Krishnakumar,
6. T. Muraleedharan
7. T. K. Kuttappan,
8. T. A. Rajan,
9. C. K. Preman,
10. O. K. Rajan,
11. K. Sivadasan and
12. V. P. Devadasan

Applicants

Vs

1. Union of India represented by
the General Manager,
Southern Railway, Madras,
- &
2. The Sr. Divisional Personnel
Officer, Southern Railway
Palghat

Respondents

M/s. K. Ramakumar,
V. R. Ramachandran Nair,
Roy Abraham and
P. Nandakumar

Counsel for the
applicants

Mr. M. C. Cherian

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicants are ELR Khalasis working under the second respondent in the grade of Rs. 750-940. They have been assigned temporary status and they are duly qualified for regularisation.

2. The applicants have alleged that in pursuance of the de-casualisation scheme prepared by the Railways in the light of the directions of the Supreme Court in Inder Pal Yadav's case (1985 2 SCC 648), the Respondents have created a large number of posts of Khalasis. It is further alleged that instead of absorbing the casual labourers like the applicants in these ~~xx~~ regular post of Khalasis, the second respondent, without considering the applicants' claim for absorption to the newly created posts, issued Annexure A-1 order of transfer on empanelment of the applicants to the post of Gangmen in the scale of Rs. 775-1025 against their willingness.

3. The applicants submitted that they have no experience to work in the gang. But they are eligible for absorption to the posts created in the same division in which they are now working. If the aforesaid transfer is effected it will prejudicially affect their rightful claim to continue as Khalasis and block the applicant's right to be permanently absorbed on regular basis. While the applicants are awaiting chances to be absorbed in regular posts the respondents are inviting options from a set of Class IV regular railway servants like the Gangman for absorption in the regular vacancies of Khalasis having a lower scale.

of pay. This is illegal, unjust and opposed to normal principles of service jurisprudence according to the applicants.

4. The second respondent in some of the divisions have already obtained options from Gangmen and issued orders of posting such of the Gangmen who have already given options for coming to allotted posts of regular Khalasis. That was challenged by casual labourers. A similar attempt made by the Railway in Trivandrum Division was also challenged by some of the Khalasis similarly situated in O.A. 210/88 which was allowed by this Tribunal. The same is the position in O.A. 8/89, O.A. 69/89 and O.A. 342/89. Under these circumstances, the applicants challenge the procedure which is being followed by the respondents in filling up the regular post of Khalasis created under the decasualisation scheme by getting options from Gangman which is admittedly a higher post.

5. The respondents have contended that the casual labourers engaged in the Engineering Department of Palghat Division are covered by the service conditions contained in Chapter 25 and 23 of the Indian Railway Establishment Manual. Casual employees are working in different departments of the Railways such as Traffic Department, Mechanical Department, Electrical Department, Engineering Department, etc. The casual labourers engaged in each of the different department are not normally interchangeable

from one department to another. Conferment of temporary status, screening, absorption into regular service, etc. are done separately in each of the above said departments. So the casual labour working in the Mechanical Department will not be considered for screening and absorption into regular service in any other department and vice versa.

6. The main criterion, according to the respondents for screening and absorption in each department, is the seniority of casual labourers in the concerned department assessed on the basis of aggregate days of work. Ext. R-1(a) and R-1(b) and R-1(c) are such empanelment lists of casual labourers in the Cannannore sub-division for the years 1986, 1987 and 1988 respectively. Seniors, including the applicants working in the same unit and same post, have been previously screened and absorbed as regular Gangmen considering the seniority as disclosed by the aforesaid lists.

7. The respondents submit that this is a uniform practice followed by the Railway right from 1970 onwards mainly due to the fact that the largest number of Class IV posts available are those of Gangman. On the appointment as Khalasis the remaining vacancies of Gangmen will be available to the applicants for regularisation. Thus the basic recruitment post on a regular basis available to a casual labourer Khalasi

in the Railways is the Class IV post of Gangman.

Hence, the regular posts of Khalasis occurring under the respective division are being filled up by calling volunteers from among Gangmen, after conducting aptitude test among such volunteers. Even though the regular post of Khalasis carry only lesser pay than that of Gangmen, the Gangmen who have worked previously as casual Labour Khalasis and have aptitude to work as Khalasi would prefer to come as regular Khalasi because of the light nature of the work. But, admittedly, there is no rule, regulation or order prescribing the above procedure of absorption of Gangmen to the post of Khalasi on the basis of the option and aptitude tests.

8. According to the respondents, Palghat Division is divided into different sub-divisions for the purpose of screening and each sub-division is under the control and jurisdiction of an Assistant Engineer and the applicants are casual labourer Khalasis under the Inspector of Works, Calicut and they can only be absorbed as Gangmen in the scale of Rs. 775-1025 against the vacancies arising in that division in which they are working. The Railway further submitted that if the procedure which is being followed from 1970 is dislocated it would cause injustice to the casual labourer Khalasis who have previously gone as regular Gangman with the aspirations of coming back as regular

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Khalasi and getting promoted as regular artisan's post in that line. The respondents also placed reliance on two other judgments of this Tribunal, Ext. R-1(d) and R-1(e).

9. Having gone through the records and after hearing the counsel we notice that when this Tribunal decided O.A. 8/89, 69/89, 210/89 and 342/89 (later decided cases, for short) the decisions Ext. R-1(d) and R-1(e) (earlier decisions, for short) were not brought to the notice of the Bench. Hence, there was no opportunity to examine the earlier decision also while rendering judgments in the later decisions.

10. The applicants in this case are admittedly casual Khalasis who have been granted temporary status and are eligible to be absorbed in regular posts and in the light of the pronouncement of the Supreme Court, the respondents are bound to frame a scheme for decasualisation and absorb the casual Khalasis like the applicants to a regular post on a time bound basis in accordance with the seniority fixed on the basis of the number of days put in by each employee. Even though this is not a statutory obligation, this is a legal obligation to be discharged by the respondents based on the judgments rendered by the apex court in this country. The Railways are bound to regularise the casual workers who come from the lowest grade of Railway service who "can ill afford

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to rush to the court" at every stage.

11. Then the only question that remains to be examined is whether the post of Khalasi should first be filled by regular Gangman on the basis of the options and then the resultant vacancies of Gangmen should be used for regularisation of casual labourers or, the casual labourers should be directly absorbed and regularised in the posts created by virtue of decasualisation scheme prepared on the basis of the directions of the highest judicial authority.

12. The very attempt of the Railways to create under the decasualisation scheme the posts pursuant to the directions of the Supreme Court indicates that they are intended for the purpose of absorbing the casual employees to those regular posts and not to be filled up ~~xxxxxxxxxxxx~~ with the regular employees such as the Gangmen. Since the Gangmen belong to a separate category by itself having different promotional avenues in that line, they need not be considered for appointment to the newly created regular posts. There is no logic or reason in bringing the Gangmen, who are already occupying regular posts in a higher scale, to the lower post of regular Khalasis, especially when such posts are created on the basis of decasualisation scheme pursuant to the decision of the Supreme Court. This will only deprive the chance of regularisation of casual labourers

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like the applicants who are waiting in the queue to be regularised as contended by the applicants who are not even given a chance to get a regular post unlike in the case of Gangmen.

13. The method of absorption of casual workers as Gangmen and reverting them to a lower post of regular Khalasi seems to be anomalous. In the service jurisprudence such a method of posting from a higher post to a lower post without following the principle of reversion is unheard of procedure.

14. Above all the crucial aspect is that the additional post created under the decasualisation scheme should have been earmarked for filling up with persons like the applicants who are working as casual labourers for unduly long period and had not been absorbed in the Railways in a regular manner in any of the post available in the Railways so far. They are also entitled to preference to Gangmen who are already occupying regular cadre enjoying higher scale and having prospect for separate line of promotion.

15. Under these circumstances refusal of the respondents to call the options from the applicants is illegal especially because the Railway is not following any regulation, rule, order or even guidelines in the matter of calling option from Gangmen alone for filling up the posts of regular vacancies of Khalasis which are

newly created under decasualisation scheme.

16. Having regard to the facts and circumstances in which the casual employees are placed, this Tribunal in OA 210/89 held as follows:

"It becomes doubly so when such 'demotion by selection is made against posts which are meant for decasualisation of casual employees who have been working in the same type of work as Khalasis or Bridge Khalasis. The respondents' argument that Khalasis senior to the applicants before us who had opted to be regularised as Gangmen would feel aggrieved if the applicants are considered for appointment as regular Khalasis, does not carry conviction. The senior Khalasis who have already been absorbed as Gangmen in the higher scale cannot and should not feel aggrieved if their juniors are absorbed as Khalasis in the lower scale."

This is followed in number of other subsequent decisions.

17. It appears to be very strange that under the decasualisation scheme additional posts are created by the respondents in the cadre of regular Khalasis for absorption of casual Khalasis under the circumstances but casual labourers ⁴ mentioned above/are completely debarred and prevented from even for submitting their options along with the Gangmen for being considered for absorption to the post of regular Khalasis.

18. It is under these back ground that we are examining both the ~~xxxxxxxxx~~ ⁴ earlier decisions (Ext. R-1(d) and the latter decisions (judgment in OA 8/89, 210/89 etc.).

We have gone through the judgments rendered by the Madras Bench of the Tribunal in TA 60/85 and TA 269/86 exhibited as R-1(d) and R-1(e). We notice that these judgments proceed on the footing that the absorption of casual labourers has necessarily to be done as a Gangman in the

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first instance and/thereafter such regular Gangmen should be considered for appointment against regular vacancies of Khalasis on the basis of the option. It was assumed in these two judgments that this is a well settled rule supported by proper provisions in the Manual. The Tribunal proceeded on this footing and came to the conclusion that casual labourer Khalasis have no right to be considered to regular vacancies of Khalasis created on the basis of decasualisation. But, as indicated above, the respondents could not produce any specific rule, regulation or instruction relating to the recruitment of regular Khalasis. Except for past practices there is no valid rule prescribing that casual Khalasis shall be recruited only from regular Gangmen who have opted for such a job.

19. In the aforesaid circumstances, we are of the view that these judgments are not rendered after fully appreciating actual facts. The very basis on which these judgments were rendered are now found to be non-existent. Therefore we are not justified in following these judgments for resolving the controversy now placed before us for consideration. 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.

21. We do not see any valid reason why the regular posts of Khalasis created in the context of de-casualisation scheme should not, for the aforesaid reasons, be filled up directly by casual labourers.

22. 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.

23. We, therefore, allow this application with the following directions:

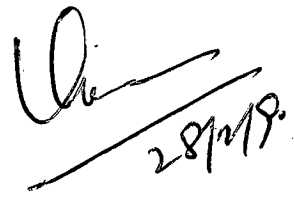
- (a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance, be filled up ^{by} calling volunteers from casual labourers in the Division who are waiting for regularisation;
- (b) The regular post of Khalasis may be offered to such casual labourers in the divisional seniority list who are waiting for regularisation. But if any casual labourer ~~xxx~~ 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 Gangmen 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 for volunteers from regular Gangmen. The Gangmen so inducted will count their seniority from the date they were first regularised as Gangmen. /

24. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

28.2.90


(N. V. Krishnan)
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

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R.A No.61/90 in O.A. No. 613/89
T.A. No.

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DATE OF DECISION 20.7.1990

Union of India represented by Applicant (s)
General Manager, Southern Railway, Madras and another

Mr M.C Cherian Advocate for the Applicant (s)

Versus

P.M Balan and 11 others Respondent (s)

M/s. K.Ramakumar, Advocate for the Respondent (s)
V.R Ramachandran Nair

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

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 613/89, 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 28.2.1990 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 respondents, the applicants in the Original Application. According to them 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. In the course of the argument it was also suggested by the learned counsel for the review applicant 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 clarifications 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 applicants 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 applicants.

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 28.2.1990 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

(N.V KRISHNAN)
ADMINISTRATIVE MEMBER