

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 75 of 2004

Wednesday, this the 4th day of February, 2004

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

1. M. Pavithran,
Manjakkandy House,
Manal Alavil, Kannur-8,
Retired as Khalasi in the Office of
the Inspector of Works, IOW,
Southern Railway, Kannur.Applicant

[By Advocate Mr. Aswin Gopakumar]

Versus

1. Union of India, represented by the
General Manager, Southern Railway,
Madras.
2. Chief Personnel Officer,
Head Quarters Office, Personnel Branch,
Southern Railway, Madras-3
3. Divisional Personnel Officer,
Southern Railway,
Palghat.Respondents

[By Advocate Mrs. Sumathi Dandapani]

The application having been heard on 4-2-2004, the
Tribunal on the same day delivered the following:

O R D E R

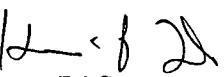
HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant, Ex-Khalasi who retired from services on 31-1-2003, has filed this application challenging Annexure A3 order dated 2-2-1996 by which his claim for a posting in the Artisan category (Blacksmith Gr.III) was turned down. Since the application has been filed after about 8 years from the date the impugned order was issued, the applicant filed MA.No.85/2004 for condonation of the delay. We have by a separate order dismissed the said MA. Since the OA has been filed challenging the impugned order dated 2-2-1996 and this is

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beyond the period of limitation prescribed in Section 21 of the Administrative Tribunals Act, the Original Application is rejected under Section 19(3) of the Administrative Tribunals Act, 1985. No costs.

Wednesday, this the 4th day of February, 2004


H.P. DAS
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.75/2004

DATED, THIS THE 11TH NOVEMBER 2005

C O R A M

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

M.Pavitran, Manjakkandy House
Manal Alavil, Kannur -8
retired Khalasi in the Office of
Inspector of Works, Southern Railway
Kannur.

... Applicant

By Advocate Mr. Aswin Gopakumar

Vs.

- 1 Union of India represented by the
GeneralManager,
Southern Railway, Madras.
- 2 Chief Personnel Officer
Head Quarters Officer, Personnel Branch
Southern Railway, Madras-3
- 3 Division Personnel Officer
Southern Railway
Palghat.Respondents.

By Mrs. Sumathi Dandapani

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application is filed by an ex- Khalasi who retired from service on 31.6.2003, challenging Annexure A3 order dated 2.2.1996 by which his claim for a posting in the Artizan category was turned down. Since the Application was filed after the passage of 8

years the applicant filed an M.A. for condonation of delay. Both the M.A. And the O.A. were dismissed. The applicant preferred a Writ Petition before the Hon'ble High Court of Kerala stating that he was not served with the impugned order and that was why he could not challenge the said order in time and that no notice was issued to him giving an opportunity for being heard. Considering the facts that he has put in number of years of service, the Hon'ble High Court condoned the delay in filing the O.A. and directed the Tribunal to pass orders on merits and it was made open to the petitioner to raise all his contentions before the Tribunal. Accordingly the OA has been restored, notices were issued and after completion of pleadings it, has come up before us for disposal.

2 Briefly stated the facts are as follows. The applicant was initially engaged as an ELR Blacksmith and was granted temporary status w.e.f. 21.6.1970 as per order dated 8.8.1973. His services were regularised as Khalasi in the grade of Rs. 196-232 by office order dated 12.1.1982. A trade test for filling up the vacancies in the post of Blacksmith skilled grade-III was conducted by proceedings dated 4.11.1986. Applicant passed the test. The grievance of the applicant is that he was not given posting against the 25% quota earmarked for Casual Labourers working in Skilled categories while persons ranked junior to him at Sl. Nos. 2,7 and 15 were accommodated in the Skilled category as per the order of the second respondent dated 4.2.1994. The applicant submitted representations on 5.9.1994 for redressal of his grievances which was disposed of stating that as he had joined regular service on

12.1.1982 he cannot be considered against 25% quota. Since such a decision was patently illegal he filed O.A. 1778/1994 which was heard along with O.A. 1607/94 filed by identically placed persons and disposed of by a common order Annexure A1 dated 29.9.1995. This Tribunal directed that the applicant should be heard before passing orders and quashed the order of the respondents rejecting the applicant's case. The applicant then submitted his representation on 11.10.1995 as directed by the Tribunal but according to him, no hearing was given to him till his retirement. Hence he again filed O.A. 608/2003 for issue of further directions whereupon the respondents have filed a statement stating that a decision has already been taken on his representation and orders were issued in letter dated 2.2.1996 communicated to the applicant on 9.2.1996 (Annexure A3). This order has not been impugned by the applicant on the ground that a decision rendered without notice to him and the merits of the case cannot be gone into in the light of the facts submitted in his representation.

3 The respondents have denied the averments in the O.A. They pointed out that as per provisions of 2007(3) of the Indian Establishment Manual (IREM) Vol.II 25% Direct Recruitment quota is set up for Casual Labourers alone and regular employees are not eligible to be considered against the said quota. The applicant had became a regular employee on 12.1.1982 and thus was not eligible and his consideration for the post of Blacksmith against 25% quota was an inadvertent mistake. This question has been examined by the Tribunal in the earlier O.A. 248/88 and other connected cases

and it was held conclusively that only casual labourers are entitled to be considered against 25% DR quota. While so the Chief Personnel Officer issued a letter dated 14.8.91 regarding the mode of filling up the posts of Artizans in grade of Rs. 950-1500 sanctioned under Decasualisation Scheme (Annexure R-4). The eligible categories for consideration for promotion to the post of Artizans are as under:

- a)Artizan Khalasi helpers in grade Rs. 800-1150
- b)Artizan Khalasi in grade Rs. 750-940
- c)Erstwhile casual laboure artizans in scale Rs. 950-1500 who were absorbed in the lower grades after 1.1.1982.
- (d)Serving casual labourer artizans in scale Rs. 950-1500

Since the applicant was not belonging to any of the eligible category he was not considered for promotion. They however admitted that the applicant was trade tested for promotion to the post of Artizan and that the Tribunal had quashed their earlier orders holding that the applicant was not eligible for consideration and directed the applicant to make comprehensive representation. A personal hearing was also granted to him on 15.11.1995 and the order is a detailed and reasoned one also setting out the rationale for the cut off date of 1.1.1982 set out in the CPO's letter as directed by the Tribunal. It is explained that the circular dated 14.1.1981 was issued in the absence of any mode for filling up of posts under the decasualisation scheme in the Artizan category. The cut off date of 1.1.1982 was fixed in the letter under the scheme as from 5.1.1982 to 19.6.1999, more than 9000 Group-D posts were sanctioned by

the Railway Board. The erstwhile CPC Artizans though were reluctant for regularisation in the above Group-D posts which involved both loss of emoluments and status but keeping in view the long term benefits of regularisation that were not available to casual labourers with temporary status had accepted regularisation against the lower post. In order to mitigate the hardship caused to these CPC Artizans, it was decided in consultation with the organised labourer to extend one more opportunity for absorption in the same grade and the cut off date was fixed as 1.1.1982 as most of the Artizans were regularised in Group-D after 1.1.1982. The applicant was not eligible to be considered based on the conditions stipulated in Annexure R-4 letter against 25% DR quota. Shri P.K. Erachan, V.K. Kumaran and A. Chamy who were considered for promotion as Blacksmith were independently considered for promotion as Blacksmith in terms of Annexure R-4 letter since they satisfied the eligibility conditions. The name of the applicant was rejected due to authentic reasons and there is no merit in the contention of the applicant.

4 A rejoinder has been filed by the applicant stating that the submissions made by the respondents are highly misleading and incorrect. The respondents are yet to clarify how all the juniors were unduly favoured ignoring the seniors listed in Annexure R3 in which the applicant's name figures at Sl. No.1. It has also been denied that the 25% direct recruitment quota is set apart for Casual Labourers alone and that it is not open to the respondents to contend that the applicant has become a regular employee prior to

the cut off date of 1.1.1982. In terms of Annexure R-4 not only regular employees but also Casual Labourers were entitled for entry under the 25% quota. The applicant has also rebutted the stand taken by the respondents before the Hon'ble High Court of Kerala that he had received orders at Annexure R-6 and explained that he had taken the stand before the Hon'ble High Court of Kerala that at that point of time it was not served on him. Hence it is contended that Annexure A-6 order ignoring the observations and findings of the Tribunal in the earlier order are misleading and deserves to be quashed and the applicant be declared to be entitled to promotion to the post of Blacksmith at par with his juniors with all consequential benefits and the respondents directed accordingly.

5 We have heard the learned counsel Shri Aswin Gopakumar appearing for the applicant and Mrs. Sumathi Dandapani appearing for the respondents and gone through the pleadings. This is the third round of litigation as far as the applicant is concerned. Initially when the applicant approached this Tribunal in O.A. 1778/1994 this Tribunal had found some merit on the contentions of the applicant and the denial of his request for absorption after subjecting him to trade test and thereafter picking up his juniors on the basis of cut off date was not found acceptable by the Tribunal particularly so as the respondents could not give any convincing reply on the rationale for setting the cut off date. Therefore the Tribunal had directed that the applicant be given personal hearing and a final decision be taken in the matter only after due consideration was given to the observations of the Tribunal and a speaking order be passed. The

respondents claims to have complied with the above orders of the Tribunal and have now issued the impugned order which is under challenge in this O.A.

6 The eligibility of the applicant for consideration against the post of Blacksmith in the scale of Rs. 950-1500 has been examined by the respondents with reference to the scheme of de-casualisation and the instructions contained in the CPO's letter dated 14.8.91. The service particulars of the applicant prior to 1991 as furnished in the O.A. are not denied by the respondents and it has been admitted by them that he was initially engaged as an ELR Blacksmith and was granted temporary status w.e.f. 21.6.1970 in the scale of Rs. 70-85 and was skilled Khalasi in the scale of Rs. 196-232 as per office order dated 12.1.1982. It is stated by the respondents themselves that faced with the problem of regularisation of large number of Casual Labourers in the post of Artizan Khalasis and at the same time keeping the avenue open for promotion for Group-D posts, a balance was struck by earmarking 50% posts for regularisation of Casual Labourers with temporary status and balance 50% to be filled by promotion from Group-D persons who passed the trade test in the order of seniority. It was decided that such a Casual Labourer who have been regularised after 1.1.1982 can be absorbed along with other Artizan Khalasis. Keeping in view the fact that had he continued as an Artizan he would have got the above position by direct absorption The cut off date of 1.1.1982 was fixed in the context that large number of Group-D posts were sanctioned by the Railway Board for the period

between 1982-99 and only 608 posts of Artizans have been sanctioned and the major portion of skilled Artizans were regularised in Group-D after 1.1.1982. The respondents have admitted in the impugned order that the applicant was regularised on 10.1.1982 i.e. after 1.1.1982 and hence he was eligible for consideration under the circular letter dated 14.8.1991. The only contention that they now raise in the impugned order is that he had not worked as a Casual Artizan in the scale of Rs. 110-180 (260-460) whereas his juniors who were considered have been appointed in Group-D in a higher scale of pay Rs. 110-180. Therefore there is no scope for comparison and claiming equality. On the other hand the applicant has contended in his rejoinder that the submissions made in para 7 of the reply statement by the respondents and the contentions of the letter at Annexure I R-4 are at variance and are motivated observations to justify the arguments advanced in the impugned order. We have therefore proceeded to examine the Annexure R-4 order and the wordings used very meticulously in order to ascertain whether there is any miscarriage of justice. Para 2 of the Annexure R-4 orders is reproduced as under:

The mode of filling up these posts has been examined, in consultation with the recognised unions. It has been decided that these posts shall be filled in the following manner.

(i) 50% (Fifty percent) of the posts are to be filled by seniority-cum-suitability (Trade Test) from among

(a) the artisan Khalasis/helpers in grade Rs. 800-1150 and (b) the Khalasis in grade Rs. 750-940 as also @ the erstwhile casual labour artisans (in scale Rs. 950-1500) who were absorbed in regular vacancies in the lower grades, after 1.1.1982. The inter se seniority of these

regular employees will be fixed as per normal rules

(ii) The balance (fifty percent) of the posts will be filled by serving casual labour artisans in scale Rs. 950-1500

(iii) After exhausting all the serving casual labour artisans in the standard trades, there is no objection to other serving casual labour in scale Rs. 950-1500 being considered for absorption against the remaining posts in grade Rs. 950-1500 after appropriate trade tests.

7 The above lays down prescribes the order in which the various categories have to be considered under the scheme of de-casualisation for filling the post of Artizans. The applicant's claim is to the categories mentioned in sub para (i)(a). In this grade there are 3 categories namely (i) Artizan Khalasis/Labourers in the grade of Rs. 800-1150 (ii) Khalasis in the grade of Rs. 750-940 and (iii) Erstwhile Casual Labourer Artizans in the scale of Rs. 950-1550 who were absorbed in regular vacancies in the lower grades after 1.1.1982. The contention of the respondents is that the applicant does not belong to any of the above categories. However, we find from Annexure R2 order that he was posted as a Khalasi in the grade of Rs. 196-232 which is equivalent to the scale of Rs. 750-940 on 12.1.1982. There is no cut off date prescribed for this category. Hence on the admission of the respondents itself the applicant was a regular Khalasi as on 14.8.1991 in the grade of Rs. 196-232. The absorption of the juniors of the applicant as stated in the OA is said to have been made against Artizan Casual Labourers with temporary status in the skilled grade absorbed in lower grades in regular Group-D posts after 1.1.1982. Even if this contention is accepted that they were absorbed in regular vacancies after 1.1.1982 in the

lower grade and that they were Casual Labourer Artizans in a higher scale, in the absence of any such orders produced before us they can only be considered under category (iii)(c). This fact cannot defeat the claim of the applicant if he is found to belong to category (b) as pointed out above. The applicant has himself claimed only the status in the category (iii)C on the ground that he was an erstwhile Casual Labourer. Even this argument has some merit as the respondents themselves admitted that the applicant was initially engaged as a Blacksmith and it is also admitted that he has passed the requisite trade test. Under the provision of Para 2007 (3) of the IREM he was eligible to be absorbed in the vacancies under skilled grade against 25% quota earmarked for Casual Labourers but the fact that he was given temporary status in a lower grade, would not stand in the way of being considered for regular absorption in the skilled cadre. There is no reasoning given by the respondents as to how he was denied the opportunity though he is qualified to be treated as Artisan Casual Labourer. How the three persons referred to by the applicant who joined later were given a higher scale on temporary status has not been explained anywhere by the respondents. Their only statement that if the applicant was aggrieved he should have approached at that time to establish his claim does not find favour with us. Therefore it can be reasonably presumed that the applicant was also absorbed in the lower grade in view of the very same reasons stated by the respondents in the reply statement that large number of posts were sanctioned in Group-D compared to the lower number of posts

available in the Artizan category and therefore they were forced to occupy the regular posts in the lower grade. Subsequently when an opportunity was given to such employees in accordance with the circular dated 14.8.91 there was no reason for the respondents to deny the same to the applicant in preference to those who had entered the service subsequently. More over the circular dated 14.8.91 does not make any distinction based on the scales of pay on which they were granted temporary status and the only stipulation is that they should have been absorbed in regular vacancies after 1.1.1982. Since the applicant was regularised on 12.1.1982 in a Group-D post, there appears to be no reason to deny the consideration to the applicant under the scheme in this category also. We have already observed that he could have been considered even under clause (iii)(b) and since inter se seniority of these employees has to be fixed as per their entry in the grade as per the circular as admitted by the respondents and the applicant entered service much earlier than the three persons referred to in the O.A. he would have had preference over them. The applicant who is figuring at Sl.No.1 of Annexure R-3 list would certainly come up for preferential consideration over these three persons who are figuring below him in the same list.

8 In view of the above facts and circumstances we are of the view that the applicant has made out a case for allowing his prayers. We therefore quash the impugned order and direct the respondents to consider the applicant for absorption against a post of Blacksmith Grade-III w.e.f. the date his juniors have been absorbed in the

grade and grant him all consequential benefits which were given to such juniors. These orders shall be implemented within a period of three months from the date of receipt of a copy of this order. The O.A. is allowed as above. No costs.

Dated: 11.11.1005


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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