

OA 8/91

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 7/91 & 8/91

T.A. No.

109

DATE OF DECISION 8.8.91

K. Arjunan & others in OA 7/91

A. G. Kerala Kumar _____ Applicant (s)
& others in O.A. 8/91

Mr. P. Sivan Pillai _____ Advocate for the Applicant (s)

Versus

Union of India through the _____ Respondent (s)
Gnl. Manager, Southern Riy,
Madras-3 and others

Smt. Sumathi Dandapani _____ Advocate for the Respondent (s)
for R 1-4 in OA 7/91 & R 1-3 in OA 8/91

CORAM: Mr. PK Madhusodhanan for R 5-16 in OA 7/91 & R 4,6,7,8,10 &
& 14 in OA 8/91

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?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

These two applications are heard together and
this
disposed of by / common judgment on consent of parties

in view of the fact that identical issue raises for
consideration. The facts, question of law and reliefs
prayed for in these applications are also the same.

2. The facts in O.A. 7/91 are as follows. The applicants
are working as Khalasi helpers and Mechanic Grade-III in
A. C. Cadre of the Electrical Department of the Southern
Railway. They are aggrieved by the fixation of their
seniority vis-a-vis respondents 5 to 16 who are also A.C.

Mechanics in the same cadre. The applicants and the respondents 5 to 16 joined the Electrical Department, Trivandrum Division as casual labourers and thereafter continued as substitutes in the Open line establishments. The applicants attained temporary status on different dates and finally they were empanelled against regular posts of Khalasis. But the respondents 5 to 16 opted to go to AC unit in 1984. Though the applicants were empanelled and they were working in the AC unit earlier than R 5-16, in the seniority list prepared by the Railway they were now shown as juniors to R 5 to 16 who have worked as substitutes in the A.C. Unit earlier to applicants. This is against Annexure A-1 detailed chart showing the service particulars of the applicants vis-a-vis Respondents 5 to 16. All casual labourers irrespective of their induction either in project/construction or open line of Electrical Train lighting (Open line) A.C. (Open line) are to be treated to be borne on one unit having one seniority list. Though the Electrical Department as a whole within the territorial limit of the Division is one unit it is functionally divided into three branches viz. Train lighting, power and A.C. Different cadres are operated for these three

different branches. Separate cadres for these different branches will apply only in respect of regular categories and not for the casual labourers/substitutes. Casual labourers/substitutes borne in the divisional seniority list are initially empanelled against the vacancies in the train lightning and power branches. Thereafter, volunteers are called for from among the regular Khalasis and the post of AC Khalasis are filled from those who possessed the requisite qualifications from among the persons who have given option. These principles are contained in circular Annexures A-3 and A-4. The regular Khalasis who have opted for AC Khalasis have to seek their advancement in that unit after their posting in the AC units. Thus the AC unit is a separate unit only in respect of regular employees and not for casual employees/substitutes. Annexure A-5 and A-6 also, according to the applicants, substantiates this principle and practice followed in the Railway. A substitute Khalasi engaged in one branch among the various branches is governed by his seniority in the unit. If he is given seniority in that branch from the date of his engagement as substitute notwithstanding his seniority and position vis-a-vis other casual labour/substitutes in the regular seniority unit, it

will result in gross injustice and loss of seniority to others and the combined seniority list will loose its relevance in respect of the employee. This is illustrated in the application by giving the following figures:

	CL/ Substitute	Branch working	No. of days agg. service.	Date of empanelment	Absorbed in A.C.
ONE UNIT	X 1. X		2000 X		1985
	X 2. X		1990 X		
	X 3. X	Project	1950 X	1985	1985
	X 4. X		1900 X		
	X 5. X		1890 X		
OPEN LINE	X 6. Train	Lighting	1600 X		
	X 7. Power		1500 X	1986	1986
	X 8. Power		1400 X		
	X 9. A.C.		25 X	1990	1990
	X 10. A.C.		25 X		

3. The applicants submitted that item 1 to 5 though far seniors to item 9 & 10 empanelled in 1985 have to be ranked junior to their erstwhile juniors for no fault of them; item 9 to 10 with two days of service can rank senior to those empanelled earlier and joined regular A C cadre earlier.

The assignment of seniority in this manner results, according to the applicant, in xxxxxx hostile discrimination among the casual labours/substitutes who form one homogeneous class for all purposes. They further submitted that where the total aggregate service counts for seniority for empanelment the same should count in fixing the seniority on empanelment as

well. The applicants and similarly placed other Khalasis were assigned seniority in the AC cadre following the aforesaid principle but R-5,11,12 & 16 filed applications O.A. 159/88, O.A.298/88 and O.A. 59/88 before this Tribunal claiming seniority in AC unit from the date of their joining as substitute AC Khalasis in the said unit. These applications were heard and allowed by the Tribunal by judgment Annexure A-8 dated 11.12.89 ignoring the principles and practice followed in the Railway. On getting information of the same the applicants filed R.A. 21/91 but it was dismissed by Annexure A-9 order dated 28.2.90 with the following observation:

"Since the applicants are not parties in the O.As we are afraid that they have no right to file an application for review of the judgment in these cases. If really they are aggrieved by the judgment, either they can file a fresh proceeding or a separate application to re-open the judgment for satisfying the Tribunal that the judgment has been passed without advertizing to the relevant materials. The applicant can take such action when the railway administration does not accept their contentions on the ground that the matter has been concluded by our judgment dated 11.12.89 sought to reviewed."

4. Thereupon Annexure A-10 provisional seniority was issued in implementation of Annexure-9 judgment. Since the applicants were shown juniors to R 5-16 they filed Annexure A-11 representations. Without disposing of Annexure A-11, Annexure A-12 memorandum was issued

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calling R-5 to 16 for trade test intended for further promotion on the basis of seniority assigned to them in Annexure A-10. Since Annexure A-12 indicates the rejection of Annexure A-11 representation the applicants have filed this Application under section 19 of the Administrative Tribunals' Act for quashing Annexure A-10, A-11 and A-12 and for a direction to fix the seniority of the applicants in the A.C. unit based on the date of entry into that cadre after empanelment and not on the basis of the date of substitute service.

5. The respondents 1 to 4 and 5 to 16 have filed separate reply statements denying all the averments and allegations in the application. We have heard the learned counsel on both sides.

6. Having heard the matter and after perusing the documents we are of the view that the main issue raised in this application had been settled by our earlier judgment dated 11.12.89 (Annexure A-8) in O.A.K. 159/88, OAK 298/88 and OAK 95/88. It is seen that identical question arose for consideration in the batch of cases referred to above. In the counter affidavit filed by the respondents 1 to 4, they have stated that "very same stand now taken by the applicants in the O.A. was taken by the respondents in the reply affidavit filed in O.A. 159/88, OAK 298/88 & OAK 95/88

A true copy of the reply affidavit in O.A.K. 159/88 i.e. one of these cases is produced herewith and marked as Ext. R-1. Hon'ble Tribunal was not pleased to accept the contention raised earlier by these respondents and those applications were allowed as per our order dated 11.12.89 i.e. Annexure A-8." Even the additional materials now presented for our consideration by Shri Sivan Pillai, learned counsel for the applicants in this case do not persuade us to take a different view.

7. It would be pertinent in this connection to read some portions of our earlier judgment:

"Before we go into the rival contentions it would be advantageous to advert to the following conditions attached to the A.C. units as admitted by the respondents in the counter affidavit:

- i) The A. C. Unit is a separate cadre and separate seniority unit;
- ii) There is no difference in the pay scale of a Electrical Khalasi in the feeder cadre and the AC Khalasi in the new cadre;
- iii) The induction into AC Unit will be on the basis of calling for volunteers with the rider that on empanelment, they have to seek promotion only in the AC cadre.

7. Keeping these features in mind, if we examine the facts it is very clear that the AC unit is a separate cadre and a separate wing having closed seniority unit, the date of entry into that unit should be the primary criterion for determining the seniority. This is all the more so, when there is no difference in the pay scale between the feeder cadre and this cadre and yet, the induction is on the basis of a voluntary option and not by a transfer ordered by the respondents. That option will naturally be exercised keeping in view the restriction that on empanelment in the AC Unit, the future of the appointees will lie only in that cadre. Obviously, the situation is not one where there is free movement from the Electrical Khalasis cadre to the AC khalasis cadre or vice versa. Therefore, before exercising an option every person will only consider the pros and cons of his decision and choose that option which is the best in his interest.

X X X X X

X X X X X

10. Ext. R-1 is the provisional seniority list of AC khalasis as as on 31.12.87, relevant portions of which have been produced by the applicant as Annexure-II (2) but the date is shown as on 4.12.88. Ext. R-2 and R-3 are the final seniority list of AC Khalasis. The date of entry of applicant in the AC unit is shown as 7.10.87 i.e. the date on which he was absorbed ignoring the fact that he entered the unit on July, 1984 and he has been assigned the last rank of 59 in that list. While N. Randranathan and A Krishnan two of the persons who are directed as per Annexure-IV order to attend the trade test are shown to have entered the A.C. Unit on 1.5.85 and 1.8.89 and placed as Sl. Nos. 27 & 39 respectively. Similarly, for the same reason Vinod Kumar has been given a higher place at Sl. No. 37. This is illegal and on a perusal of this list it can be seen that the applicant has not been given proper place which is eligible reckoning his service from the date of his original joining in 1984. He had not been given place above the persons now called for trade test. We are also satisfied that the persons who came later had been given higher ranks above the applicant and that his objection Annexure-III has not been properly considered before finalising and issuing Ext. R-3. So we are not inclined to accept the case of the Railway as disclosed in the seniority lists Ext. R-2 and R-3 produced on 1.12.89.

11. Ext. R-4 is a judgment of the Madras Bench of the Central Administrative Tribunal. Relying on this judgment the learned counsel for the Railway submitted that the position of the applicant is similar to that of the applicants in the case considered by the Madras Bench and hence this case also should be dismissed. We see no merit in the submission. Ext. R-4 judgment is distinguishable. In that case applicant and sixteen other who are casual labourers have been temporarily appointed to the AC unit as a stop gap arrangement before they had been empanelled. Subsequently, the respondents took steps to make regular appointments by calling for volunteers from various branches in the Electrical departments takes place, they will be displaced from the present post. The Tribunal dismissed the case without considering the question as to whether the AC unit is a separate unit having separate seniority list which is the most important aspect in the instant case. In the case on hand, the applicant has no such apprehension of ousting from his present post. His case on the other hand is that he came to AC unit in 1984 and is working as Khalasi. Subsequent to his joining in this unit various others came to AC unit as volunteers giving their options. These persons were given benefit of their earlier services and the days of work were calculated and they were called for trade test earlier to the applicant. The grievance of the applicant is only against persons like him unlike in the above case decided by the Madras Bench in which the persons who were being inducted later were all regular and permanent employees of the Railway. Hence the applicant in this case seeks for a direction to the respondents to allow him to sit for trade test for AC Mechanic Grade-III along with his juniors. So this case is not identical and we are not inclined to follow it in spite of the persuasive submission of the learned counsel for the Railways."

8. The averment of learned counsel Shri P. Sivan Pillai appearing for the applicants is that some of the relevant documents were not considered by this Tribunal while disposing of the batch of cases and pronouncing Annexure Annexure-2 chart shows that ^h A-8 judgment. According to him/there is no separate A.C. cadre. Annexure A-1 indicates that the Air Conditioning staff working in all the Divisions are borne on the common seniority controlled by Sr. DEE/MAS. So far as the casual Khalasis/substitutes are concerned, they cannot get seniority over the applicants who are earlier entrants in the regular service and they are entitled to seniority on that basis. Annexures A-3 and A-4 xxxx support the case of the applicants. The regular absorption of casual labours is to be made on divisional basis.

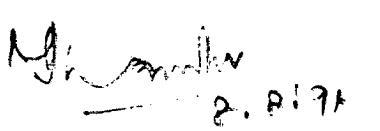
9. Annexure A-5 to A-7 are important documents. Annexure A-5 and A-6 reveal that as on 6.6.84 filling up of the vacancies of A.C. Khalasis Electrical Branch would be made by calling options and the persons who will be posted as regular A.C. Khalasis will have to seek their advancement only in A.C. cadre. This was given wide publicity. The fifth respondent is one of the persons who had given the option and it is clear from Annexure A-7. He was accordingly

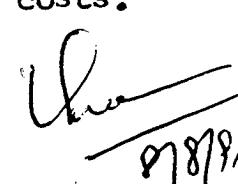
transferred to A.C.cadre at his request along with similarly situated persons. After screening for empanelment they were posted in that cadre on regular basis with separate seniority. Hence a separate cadre viz. A. C. cadre came into existence from 1984 and the volunteers who wished to work there seeking their advancement in that cadre were also posted in that cadre. The applicant could have availed of this opportunity and opted to go to that cadre. But they failed to do so. On the other hand, Respondents 5 to 16 came from substitute/casual Khalasis of construction and they were successful in getting posting in the A.C. Unit. As indicated above it is clear from Annexure A-6 and A-7 that substitute Electrical Khalasis who were found suitable for posting in the AC cadre will be screened and empanelled in that unit and they can seek further advancement in the AC cadre only. This opportunity which was available for the applicants was ^{not} ~~available~~ of, by them. But Respondents 5 to 16 were able to get the benefit of that opportunity and now they can seek their advancement only in that unit treating the unit as a separate establishment. This cannot be objected to by the applicants by filing cases and raising all these technical contentions at this stage.

Had the applicants given their option in 1984 to go to AC unit no injustice could have xxxx happened to them and there would not have been any loss of seniority vis-a-vis respondents 5 to 16 as contended by them showing the illustrations.

10. Regarding the question as to whether the AC unit is a separate unit for the purpose of seniority it is a settled issue. We have very clearly laid down in Annexure A-8 judgment for the reasons indicated therein that it is a separate unit ever since 1984 and it has become final since the respondents 1 to 4 therein have accepted the verdict and issued the seniority without challenging the findings therein before the Supreme Court and hence it is not necessary for us to go into the question over again on the basis of the submissions made by the learned counsel for the applicants particularly when no satisfactory materials are placed before us to reconsider our earlier judgment.

11. In the result we see no merit in these two applications. They are only to be dismissed. Accordingly we dismiss the same. There will be no order as to costs.


N. Dharmadan
2. P. 71
(N. DHARMADAN)
JUDICIAL MEMBER


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