

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 113/91
~~XXXXXX~~

~~199~~

DATE OF DECISION 22-7-1992

RA Venugopal

Applicant (s)

Mr P Santhosh Kumar

Advocate for the Applicant (s)

Versus

Union of India rep. by the
General Manager, Southern
Railway, Madras and others.

Respondent (s)

Mr MC Cherian

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **PS Habeeb Mohamed, Administrative Member**
and

The Hon'ble Mr. **AV Haridasan, 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

Shri. PS Habeeb Mohamed, A.M

In this application, Shri RA venugopal, Khalasi Helper, Electrical Repair Depot, Southern Railway, Palakkad has prayed for the issue of directions by the Tribunal to the respondents to transfer him to the A/C Unit on the basis of the orders issued in Office Order No.J/P.535/III/AC dated 17.6.86 at Annexure-II and give him the benefit of due seniority and further promotions based on the said seniority and also for other incidental reliefs.

2 The applicant was initially engaged as a Electrical Casual Labourer on 18.3.1981. Later by order dated 6.10.1983, he has been screened and absorbed as a regular Khalasi. While so, by notification No.ERD/I 401/7-6-85 dated 5/6-6-1985, the respondent-2 called for applications from regular Khalasis for filling up the posts of A/C

Khalasis. However, By order dated 17.6.1986 at Annexure-II, he was transferred and posted as A/C Khalasis at Mangabre, but not relieved from Palakkad due to administrative reasons. He sent a representation at Annexure -V dated 25.10.90 stating that though he was selected earlier, ^{instead of appointing him, his department} by another notification called for fresh volunteers, amongst regular Khalasis for A/C Unit; but, there has been no reply to his representation; being aggrieved and finding that his juniors CR Haridas and K Ramesh Kumar ^{ve} have been transferred and posted as A/C Khalasis and further promoted as A/C Mechanic Gr.III, the applicant has come up before this Tribunal with the prayers as mentioned earlier.

2. In the counter filed by the respondents, it is stated that there is only one A/C Unit for Trivandrum and Palghat Divisions of the Southern Railway and the same is ^{controlled} confirmed by the Trivandrum Division. ^L When the nature of work of A/C Khalasi demands a minimum educational qualification at the SSLC level for efficient looking after ^{of} the Aircondition Unit; Annexure-I notification calling for volunteers mentioned by the applicant was only for choosing persons for temporary utilisation as Khalasis. It was not even evident that the respondents in the Palghat Division ^{were to} ~~to~~ conduct regular selection and empanelment of staff in the A/C Unit. Though, the Annexure-II order has been issued, a general order has been issued from the Trivandrum Division specifying that vacancies ^{which} existed prior to 16.8.85 may be filled by persons having the minimum educational qualification.

of SSLC and the vacancies arising subsequently may be filled by persons having SSLC and ITI qualifications. The letter is dated 30.7.86 at Exbt.R1 which mentions the above specification. There is also a reference in the counter, that there had been an earlier order dated 19.8.85 at Exbt.R2 issued of the Chief Personnel Officer, Madras to the effect that no person who does not possess the SSLC qualification should be appointed as A/C Khalasi. The respondents have also produced a copy of the letter dated 21.5.87 which reads as follows:-

" It is clarified that the qualification is to be made applicable only in respect of Khalasis to be considered for posting in AC Wing on or after the date of issue of the circular i.e., 19.8.85."

In ~~xxxxxx~~ the light of these various circulars it was decided that even for temporary utilisation and appointment, only persons with SSLC qualification need be posted as A/C Khalasis. It is also stated ^{that} ~~in the application~~ ^{for the post} that the applicant ^{had stated that he} was having the SSLC qualification, but actually he was not having the SSLC qualification. The copy of the application reads as follows:

" APPLICATION FOR AC KHALASI

Sr.DPD/PGT

Palghat
11.6.85

Thro' EIC/A/RD/PGT

Sub: Screening of Khalasi for AC Units-

Ref: Sr.DPD/PGT letter No.J/P 535/III/AC of 5/6.6.85.

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1	Name	R.A. Venugopalan
2	Staff No.	J/E 772
3	Designation	ELK/Sub
4	Scale	196-232
5	Date of Birth	30.11.1955
6	Date of appointment	18.3.1981
7	Whether beonging to	
	SC/ST/OC	-No-
8	Educational/Technical qualifications	-SSLC

Yours faithfully,
Sd/-
(RA Venugopalan) "

3 In the rejoinder filed by the applicant it is stated that the selection proceedings initiated earlier should be continued and finalised according to the decisions which were there at the time of issue of Annexure-I order. Therefore, the contention that the applicant was not having the SSLC qualification is not a ground for denying him the posting as A/C Khalasi at Mangalore. He states that one P Gangadharan, who was not having the SSLC was appointed as A/C Khalasi and similarly placed persons M Surendran, T Krishnadas and KJ Vincent were so appointed. He also referred to one Basheer Jan who has been posted as A/C Khalasi with only 3rd Standard.

4 The learned counsel for the applicant relied on various decisions of the Supreme Court in support of his contention that the Recruitment Rules at the time of issue of the notification would guide the selections and subsequent orders are not relevant. He relied on a decision of the Supreme Court in NT Devin Katti and others V. Karnataka Public Service Commission (1990)14 ATC-688 and also P Mahendran V. State of Karnataka (1990) 1 SCC 411, also a decision of the Supreme Court in YV Rangaiah V. J Sreenivasa Rao AIR 1966 SC 1942 wherein their Lordships observed as follows:

" The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Gr.II will be according to the new rules on the zonal basis and not on the Statewide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."


He brought to our attention the fact that no proper Recruitment Rules have been framed for the post and it is only the General Manager of the Railways who can issue relevant orders in accordance with the Indian Railway Establishment Code Vol.I under Chapter-1, Sections 123 and 124 which state as follows:

" 123. The Railway Board have full powers to to make rules of general application to Group C and Group D railway servants under their control.

" 124. The General Managers of Indian Railways have full powers to make rules with regard to Railway servants in Group C & D under their control provided they are not inconsistent with any made by the President or the Ministry of Railways."

The learned counsel for the respondents on the other hand stated that he was not educationally qualified and even at the time of the initial notification at Annexure-I, the requirement was based on SSLC.

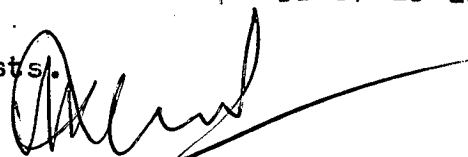
5 We have heard the parties and perused the records. While no authority has been produced for promulgation of the Recruitment Rules for the post of A/C Khalasi at the relevant time and while it is not stated that the General Manager of the Railways had issued the orders in accordance with the provisions of the Code as cited above, and while ^{we} do not have the least doubt that the Recruitment Rules of the relevant time ^{we} which are to be followed, ^{we} we have also no doubt that the notification at Annexure-I was issued on 6.6.1985, whereas, the Circular No.P(S) 407/VII/Artisan/ SRES dated 19.8.85 at Exbt. R2 clearly says that the prescribed educational



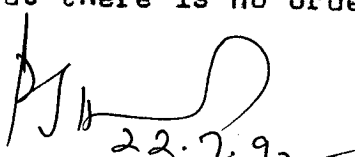
qualification for the post of A/C Khalasi is SSLC/ Matriculation. We find that there is no averment in the counter that because of the wrong information given by the applicant about his qualification, he was not selected as A/C Helper. The applicant only says that his qualification is SSLC without indicating whether he had studied upto SSLC or passed the same. Therefore, on the basis of the notification dated 6.6.85 which was issued prior to the date of the circular dated 19.8.85, the applicant is entitled to be considered by the respondents for the post of A/C Helper, in the light of the various decisions of the Supreme Court as indicated above and relied on by the applicant.

6 In view of the above, we direct the respondents to reconsider the applicant's case for the post of A/C Khalasi Helper particularly, in the context of a number of other persons who are not Matriculates, who had been selected as A/C Khalasi Helpers. The matter be reconsidered and orders issued within a period of two months from the date of receipt of a copy of this order posting him against one of the vacancies which existed from the time of the issue of Annexure-II order and his pay be fixed notionally, on this basis but he will not be entitled to any back wages, subject to regularisation in the post, he will also be entitled to further promotions in accordance with law from appropriate date but no arrears will be payable. The respondents are directed accordingly.

7 The O.A. is disposed of as above, but there is no order as to costs.


(AV Haridasan)
Judicial Member

22.7.92


(PS Habeeb Mohamed)
Administrative Member