

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 116/91
T. A. No.

199

DATE OF DECISION 22.7.92

P Prasanth Kumar Applicant (s)

Mr. VK Ravindran Advocate for the Applicant (s)

Versus

The Divisional Railway Manager Respondent (s)
Palghat Division of S. Railway,
Palghat and 8 others.

M/s MC Cherian & TA Rajan Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. PS HABEEB MOHAMED 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

SHRI N DHARMADAN, JUDICIAL MEMBER

A substitute Khalasi who joined as Box Boy at Coimbatore Railway Station in the Palghat Division of Southern Railway, filed this application under Section 19 of the Administrative Tribunals' Act, challenging orders at Annexures 4, 11, 15 & 16. He is also claiming seniority over respondents 4-9.

2. According to the applicant, after his joining as Box boy when permanent post of 4 Khalasis arose in the Clothing Cell of Stores Department, he was transferred alongwith 3 others for screening and absorption. Accordingly the applicant was screened. The Divisional Personnel Officer, Palghat as per memorandum dated 12.8.81, Anne-3

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on 28th
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designated the applicant as Store Khalasi. The said proceedings read as follows:

"Consequent on the sanctioning of four Khalasis for clothing Cell as permanent measure with effect from 30.11.79 by DRM vide sanction No. J/S 51/C.Cell/staff dated 20.12.79 the following unskilled mates in grade Rs.196-232 are designated as Store Khalisis in grade Rs.196-232 are posted to work in the clothing cell with effect from 30.11.79.

1) DOS/S/1	Shri MP Ravindran
2) DS/1/78	" P Prasanth Kumar
3) DS/6/79	" K Pavithran
4) DS/1/80	" B Cyril

Subsequently on the basis of the request of the applicant for considering his cases also in some vacancies in the Traffic Department and getting promotion in that line, a further screening was made for absorption as Artisan staff in the year 1984. As per Annexure IV proceedings the Divisional Railway Manager has approved the applicant as regular employee w.e.f. 11.2.84. Later they passed Annexure 9 order confirming the applicant w.e.f. 1.6.86. Since the applicant was not given his due promotion in the Stores Department ^{of} intention of the original screening based on Annexure 3 w.e.f. 30.11.79 he filed representations. There is also JCM decisions indicating that the applicant is eligible for seniority from 1979. Applicant also brought to our notice Annexure 14 a letter issued by the DSO recommending the seniority of the applicant in the Clothing Cell w.e.f. 30.11.79. Based on these facts the learned counsel for the applicant submits that the applicant is entitled to his permanent absorption, seniority and further promotion in the

Stores Department. The applicant has come up with the following prayers:

- I) To call for the records leading to Annexures 4, 11, 15 and 16, and set them aside as being illegal, arbitrary and malafide.
- II) To direct the respondent authorities (1 to 3) to give the applicant his due seniority and promotions considering his regular service as Store Khalasi with effect from 30.11.1979 as per Annexure-3, in terms of his representations thereof made as per Annexure-18.
- III) To direct the respondent authorities (1 to 3) to re-post the applicant in the Stores department with continuity of service and consequential benefits.
- IV) To direct the respondent authorities (1 to 3) to give the applicant all other promotions due to him taking into account his service with effect from 30.11.1979, with consequential benefits including arrears of pay; and
- V) To issue any other direction to the respondent authorities (1 to 3) which this Hon'ble Tribunal deem fit to grant and to award the cost of this applications. "

3. The respondents in the reply statement submitted that the applicant cannot claim promotion in the Stores Department as also in the Traffic Department. The considered applicant who was for screening ~~xi gimaxky~~ when 4 posts of Khalasis became vacant in the Clothing Cell of Stores Department of the Railway, submitted request for absorption. This was considered and he was transferred alongwith three others to that department, but there was no screening in 1979 as contended by him. His screening was done only in 1984 as per Annexure 4 for permanent absorption. Hence, he is entitled for regular absorption from the date mentioned in Annexure 4. Later, he was confirmed in that department with effect from 1.6.86. It is further stated that under the 3rd respondent, the Clothing Cell is a separate unit and the applicant was transferred to

that unit as per Annexure -13. But his regular appointment was w.e.f. 11.2.84 as indicated in Annexure 4. They also submitted that the only avenue of the promotion in the Clothing Cell was promotion as Tailor. Since the applicant was working as Helper to the Tailors he can get promotion as Tailor when his turn comes. But, because of the absence of sufficient vacancy in the post of Tailor he filed requests to come to Traffic Department. This request was considered and the applicant was screened and empanelled. The applicant and other Khalasis who were working in the Clothing Cell cannot be allowed to get any promotion as expected by them with reference to the date of their joining in that unit. Hence, his request to give him promotion and regular absorption in the Traffic Wing alongwith the other respondents 4-9 cannot be considered. The employees like Prakasan, R.4, were working as regular Khalasis in the Stores Department under the 3rd respondent. They have their avenue of promotions in the Artisan Cadre of the Stores Department such as Hammerman, Blacksmith, Timmersmith etc. Since the applicant wanted to come to the Traffic Department the respondents issued Annexure 4. It is under these circumstances based on the request of the applicant that Annexure 4 order was passed giving the applicant regularisation w.e.f. 30.4.84. The applicant cannot maintain his claim for promotion and service benefits in two lines at the same time.

4. We have heard the learned counsel on both sides. After considering the submissions of the counsel on both sides in the light of pleadings we asked the learned counsel for the applicant whether the applicant wants to maintain his seniority and position in Stores Department or in the Traffic Department. Then the learned counsel after consulting his client submitted that the applicant is confirming his relief based on Annexure -31 order of the DPO by which the applicant has been screened for absorption in permanent post w.e.f. 30.11.79. He further submitted that his client's line of promotion is confined in the Stores Department in which the Clothing Cell is also attached as part of it. Even though the applicant has filed the representation Annexure 17 & 18 claiming his seniority based on further orders passed by the Department he is submitted at the bar that his seniority should be confirmed w.e.f. the date of screening viz., 30.11.79 and he only wants to seek his avenue of promotion in that particular line in the Stores Department.

5. The learned counsel for the respondents submitted that the order at Annexure-131 cannot be considered as an order of the screening the applicant for considering him for a regular post. Even if he confines his seniority in the line of promotion in Stores Department Annexure IV should be taken as a basis of regular absorption. We have considered this submission, On perusal of Annexure 131 which is extracted above. We are satisfied that the

the applicant was permanently absorbed from 1979, Annexure 3 says that permanent posts are available in the Clothing Cell and it is to be filled up. 4 persons including the applicant were deputed to the Clothing Cell w.e.f. 30.11.79. If there were permanent posts available at that time and the Khalasis were considered for that posts after screening and allowed to work there, there is no justification in denying permanency in the service from that date. The fact is that the applicant was working in that post from 1979. He is entitled to regularise in that post/vacancy, in that department from the date of regular absorption as seen from Annexure -3.

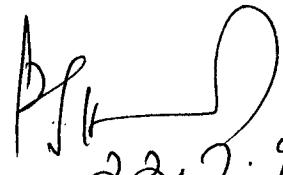
6. In view of this position we are of opinion that Annexure -3 is the basic document for the absorption of the applicant in the Railway services. Whatever right emanating from Annexure -3 will have to be given effect to by the Railway. Now since the applicant is confining his line of promotion in the Stores Department, the Railway should consider his request giving Annexure -3 as the basis of his original absorption.

7. In this view of the matter, we are not deciding any other issue raised by the applicant in this case about his seniority over respondents 4 to 9. Having considered the request of the applicant we are of the view that we can dispose of this application with directions. The applicant will file a detailed

representation before the 2nd respondent (DPS) confining his relief of permanent absorption and promotion in the Stores Department based on his permanent absorption in the Clothing Cell of Stores Department w.e.f. 30.11.79 as shown in Annexure-3. The representation shall be filed within 2 weeks from the date of the receipt of the copy of the judgment. If such a representation is filed by the applicant before the 2nd respondent as indicated above, he shall consider the applicant's absorption, seniority and promotion w.e.f. 30.11.79 in the Stores Department and grant him promotion and other service benefits which he is eligible in accordance with law. This shall be done within a period of 3 months. Accordingly, we dispose of this application. There will be no order as to costs.


22.7.92

(N DHARMADAN)
JUDICIAL MEMBER


22.7.92

(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

22.7.1992