

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA Nos.710/95, 715/95, 716/95, 717/95 & 137/96

Wednesday, this the 13th day of November, 1996.

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

....

OA No.710/95

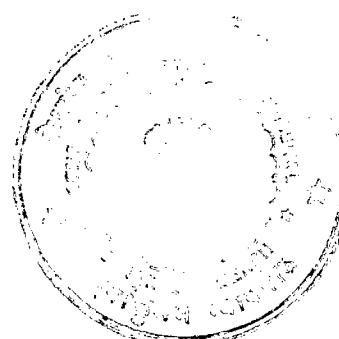
1. KN Dayanandan, Khalasi
under the Inspector of Works,
Southern Railway, Trichur.
2. KT Rameshan, Khalasi
under the Inspector of Works,
Southern Railway, Ernakulam South.
3. K Ammini, Woman Khalasi,
Inspector of Works,
Southern Railway, Trichur.
4. PV Kumari, Khalasi,
Inspector of Works,
Southern Railway, Trichur.
5. VV Mathew, Khalasi,
Inspector of Works,
Southern Railway, Trichur.

....Applicants

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through the
Secretary to the Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railway, Headquarters Office,
Park Town PO, Madras--3.
3. The Senior Divisional Engineer,
Southern Railway, Trivandrum Division,
Trivandrum--14.
4. Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum--14.
5. The Chief Personnel Officer,
Southern Railway, Madras--3.



....Respondents

By Shri James Kurien, Addl Central Govt Standing Counsel and
Standing Counsel for Railways.

contd.

OA No.715/95

1. KK Balakrishnan, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
2. PV Krishnankutty, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
3. CC Devassy, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
4. KK Chandran, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
5. TL Francis, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
6. IK Suresh, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
7. MS Krishnan, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
8. KV Devassykutty, Khalasi,
Inspector of Works Office,
Southern Railway, Ernakulam.
9. K Mohanan, Khalasi,
Inspector of Works Office,
Southern Railway, Ernakulam.
10. MC Narayanan, Khalasi,
Inspector of Works Office,
Southern Railway, Ernakulam.

....Applicants

By Advocate Shri VR Ramachandran Nair.

vs

1. Union of India represented by
the General Manager,
Southern Railway, Madras.
2. The Divisional Personnel Officer,
Southern Railway, Trivandrum.
3. The Senior Divisional Engineer,
Southern Railway, Trivandrum.

....Respondents

By Shri TPM Ibrahim Khan, Sr Central Govt Standing Counsel and
Standing Counsel for Railways.

OA No.716/95

1. S Balraj, Khalasi,
Inspector of Works Office,
Southern Railway, Thiruvananthapuram.

contd.

2. C Sakthidharan Nair, Khalasi,
Inspector of Works Office,
Southern Railway, Thiruvananthapuram.
3. K Thankappan Nair, Khalasi,
Inspector of Works Office,
Southern Railway, Thiruvananthapuram.
4. G Gopalakrishna Panicker, Khalasi,
Inspector of Works Office,
Southern Railway, Thiruvananthapuram.
5. RC Jayamohan, Khalasi,
Inspector of Works Office,
Southern Railway, Thiruvananthapuram.
6. G Mani, Khalasi,
Inspector of Works Office,
Southern Railway, Thiruvananthapuram.

....Applicants

By Advocate Shri VR Ramachandran Nair.

vs

1. Union of India represented by
the General Manager,
Southern Railway, Madras.
2. The Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram.
3. The Senior Divisional Engineer,
Southern Railway, Thiruvananthapuram.

....Respondents

By Shri James Kurien, Addl Central Govt Standing Counsel and
Standing Counsel for Railways.

OA No.717/95

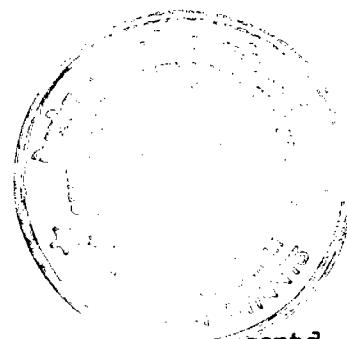
1. MA Francis, Khalasi,
Inspector of Works Office,
Southern Railway, Trichur.
2. KK Prakashan, Khalasi,
Inspector of Works Office,
Southern Railway, Ernakulam.

....Applicants

By Advocate Shri VR Ramachandran Nair.

vs

1. Union of India represented by
the General Manager,
Southern Railway, Madras.
2. The Divisional Personnel Officer,
Southern Railway,
Trivandrum.



3. The Senior Divisional Engineer,
Southern Railway, Trivandrum.

....Respondents

By Shri TPM Ibrahim Khan, Sr Central Govt Standing Counsel and
Standing Counsel for Railways.

OA No.137/96

1. C Johnkutty, Khalasi,
Under Inspector of Works,
Southern Railway, Trivandrum Central.

2. R Gangadharan Nair, Khalasi,
under Inspector of Works,
Southern Railway, Trivandrum Central.

3. K Sanal Kumar, Khalasi,
under Inspector of Works,
Southern Railway, Trivandrum Central.

4. K Sudarsanan, Khalasi,
under Inspector of Works,
Southern Railway, Trivandrum Central.

5. C Bhuvanedran Nair, Khalasi,
under Inspector of Works,
Southern Railway, Trivandrum Central.

6. Smt S Santha, Khalasi,
under Inspector of Works,
Southern Railway, Trivandrum Central.

....Applicants

By Advocate Shri TC Govinda Swamy.

vs

1. Union of India through the
Secretary to the Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. The General Manager,
Southern Railway, Madras--3.

3. The Senior Divisional Engineer,
Southern Railway, Trivandrum--14.

4. The Divisional Accounts Officer,
Southern Railway, Trivandrum Division,
Trivandrum--14.

5. The Divisional Personnel Officer,
Southern Railway, Trivandrum--14.

6. The Chief Personnel Officer,
Southern Railway, Madras--3.

7. Sri Govindankutty, Assistant Engineer,
Office of the Assistant Engineer,
Southern Railway, Trivandrum.

....Respondents

R.1-6 by Advocate Smt Sumathi Dandapani.

These applications having been heard on 8th November, 1996, the Tribunal delivered the following on 13th November, 1996:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

The issues raised in these cases are similar and they are being disposed of by a common order. The facts in OA 710/95 may be noticed to provide the background against which these issues arise.

2. Applicants in OA 710/95 were empanelled as Gangmen/women in the scale Rs.775-1025. In 1993, by A2, A3 and A4, they were posted "on request" as Khalasi in the scale Rs.750-940. Applicants contend that Khalasis form a different cadre and that they have no lien on the post of Gangman. A3 states that there is no right to seek a retransfer to the parent unit. While matters stood thus, the posts of Khalasis were declared surplus and by A1 dated 22.5.95, applicants were transferred on administrative grounds and posted back as Gangmen. A1 is challenged on the ground that only the General Manager has powers to vary the number of Group D posts, that the decision to surrender posts has been taken by the third respondent who has no powers to do so, and that there being no seniority list published, the rule that the junior-most employee be transferred has not been observed. In some of the applications, contentions are also raised that when applicants were posted as Khalasis, their pay as Gangmen was not protected and that by transferring them back as Gangmen, their conditions of service have been varied adversely without notice (OAs 715/95 to 717/95). A further contention advanced

is that procedures laid down in the Industrial Disputes Act, 1947 have not been followed for rendering applicants surplus (OA 137/96).

3. Applicants in OA 137/96 had approached the Tribunal for the same relief in OA 1305/95 and the Tribunal directed the concerned authority to consider a representation from the applicants. This was done and A2 (in OA 137/96) was passed rejecting the prayer of the applicants to retain them as Khalasis. A2 (in OA 137/96) is also challenged.

4. Respondents state that there were 37 vacancies of Khalasis under the Bridge Inspector and against these vacancies, 37 Gangmen including the applicants, were transferred and posted. They continued to be Khalasis under the Inspector of Works, but were charged against the Bridge Inspector's vacancies. These Bridge Khalasi vacant posts were surrendered as part of a manpower planning exercise and consequently there was an excess of Khalasis under the Inspector of Works. Since there was a shortage of Gangmen, these excess Khalasis were transferred as Gangmen. Respondents have specifically stated that only the juniormost Gangmen working as Khalasis under the Inspector of Works have been transferred to the Gang, and that the transfer will not curtail any promotional avenues. Respondents state that the surrender of 2% of the operated strength and 3% of the sanctioned strength is done strictly in accordance with the guidelines laid down according to which departmental officers namely the Departmental Officer, the Divisional Personnel Officer and the Divisional Accounts Officer jointly, have been delegated the powers to identify the number of posts and surrender them.

5. A2, A3 and A4 show that applicants who were Gangmen, were posted on request in a lower scale as Khalasis under the Inspector of Works and not under the Bridge Inspector. It is stated in the impugned order A1 that they were "being charged against" posts of Bridge Khalasis. It is not known how or why employees under the Inspector of Works are charged against posts under the Bridge Inspector. No orders authorising such a procedure have been produced before us, nor have any Rules been produced which show that employees holding a post can be charged against another post under the control of a different officer. Though respondents contend in their reply that the impugned transfer will not affect their promotional avenues, this is incorrect, since the impugned order A2 (in OA 137/96) quite unambiguously states that:

"on redeployment as Gangmen your seniority will be fixed based on the rules applicable to administrative ground transfers, and also for advancements as admissible to Gangman."

(Emphasis added)

This indicates that this is not a case of transfer, but redeployment. Transfer cannot affect seniority (except perhaps in request transfers but here there is no dispute that the transfers impugned are not on request; on the other hand they are challenged) nor can a transfer alter promotional avenues.

6. It is also categorically stated by the respondents that posts surrendered are those of Bridge Khalasis under the Bridge Inspector. As noticed by us earlier, applicants are not working under the Bridge Inspector and there is no authority shown to us to charge them against posts under the Bridge Inspector.

It follows that surrender of posts under the Bridge Inspector cannot have any impact on applicants who are working under the Inspector of Works. If, as contended by respondents, only vacant posts of Bridge Khalasis have been surrendered, then no employees would have to be disturbed as a consequence. In fact, Memorandum No.V/P.135/Ty San/Engg/Vol II, dated 25.9.95 and 2.5.95 show that the posts surrendered are to be utilised for creation of posts in the Civil Engineering Department and that twenty posts surrendered are in the scale Rs.800-1150 whereas applicants are in the scale Rs.750-940. In this view, it is unnecessary to go into the question of lack of jurisdiction or otherwise of the surrender of posts under the Bridge Inspector, though much of the thrust of the contentions on both sides was on this point.

7. No orders declaring posts of Khalasis under the Inspector of Works surplus have been placed before us. Unless posts of Khalasis under the Inspector of Works are declared surplus, applicants who are Khalasis under the Inspector of Works, cannot be moved out of their cadre and scale. Even if a surplus is declared, redeployment of surplus personnel will have to be done strictly in accordance with the rules laid down in that behalf. Redeployment cannot be done on the ground that an employee is charged against some other post, which is being surrendered. Applicants have produced A7 to show that in March, 1989, 100 permanent posts of Khalasis have been created under the Inspector of Works. That being so, it is quite unlikely that there will be a surplus in 1995 of Khalasis under the Inspector of Works, apart from the fact, as stated earlier, that no order declaring Khalasis under the Inspector of Works surplus has been produced before us by the respondents.

8. In the light of the above discussion, applicants succeed in their prayer to quash the impugned order A1 in so far as it transfers applicants out of the cadre of Khalasis in the scale Rs.750-940. We allow the applications and quash A1 (OA 710/95), A6 (OA 715/95), A2 (OA 716/95 and OA 717/95) and A1 and A2 (OA 137/96) as far as applicants in the respective applications are concerned. No costs.

Dated the 13th November, 1996.

sd/-
AM SIVADAS
JUDICIAL MEMBER

sd/-
PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

CERTIFIED TRUE COPY
Date 19-11-96

M
Deputy Registrar



A
19/11/96

19/11/96

List of Annexures:

DA 710/95

1. Annexure A1 : A true copy of the Office Order No.69/95/WP dated 22/5/95 issued by the 4th respondent.
2. Annexure A2 : A true copy of the order No.71/93/WP dated 29/4/93 issued by the 4th respondent.
3. Annexure A3: A true copy of the order No.62/93/WP dated 20-4-93 issued by the 4th respondent.
4. Annexure A4: A true copy of the letter No.V/P 536/I/Vol.III dated 21/6/93 issued by the 4th respondent.

DA 715/95

5. Annexure A6: True copy of Order No.V/W.349/00 dated 29/5/1995 issued by the 3rd respondent transferring the applicants as Gangman.

DA 716/95

6. Annexure A2: True copy of Office Order No.69/95/WP dated 22/5/95 issued by the 2nd respondent posting the applicants as Gangman.

DA 717/95:

7. Annexure A2: True copy of Order No.V/W.349/00 dated 29/5/95 issued by the 3rd respondent transferring the applicants as Gangman.

DA 137/96

8. Annexure A1: A true copy of the Office Order No.115/95/WP dated 25/9/95 issued by the fifth respondent.
9. Annexure A2: A true copy of the Order bearing No.V/W 349/Court dated 22/1/96 issued by the 3rd respondent.

