

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 167/90
T.A. No. XXXXX

199

DATE OF DECISION 28.2.1991

T.M.Raman and four others Applicant (s)

Mr.K.Padmanabhan Advocate for the Applicant (s)

Versus

Union of India, represented by
General Manager, Southern Railway,
Madras -3 and 6 others Respondent (s)

Mr.M.C.Cherian & Advocate for the Respondent (s)

CORAM: Saramma Cherian &
T.A.Rajan

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

The Hon'ble Mr. A.V.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

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 22.2.1990 filed under Section 19 of the Administrative Tribunals Act the five applicants who are working as Electrical Khalasi in the Diesel Shed, Southern Railway, Erode have prayed that respondents 1 to 4 be directed to re-fix their seniority in the impugned seniority list of Electrical Khalasis at Annexure-A by taking into account their dates of initial appointment as Loco Khalasis. The brief facts of the case are as follows.

2. The applicants were appointed as Loco Khalasis in the Steam Loco Sheds in Palghat Division on various dates between 17.12.77 and 16.2.79. All the broad gauge engines in Palghat Division were dieselised in 1982 and the employees like the applicants who are working as Loco

Khalasis, Firemen etc. in relation to Steam Trains became surplus and without work. All the Fireman Grade B and C in the Palghat Division which were the promotion post of Loco Khalasis were re-deployed in different ways to avoid retrenchment as Diesel Assistants or some other posts with bottom seniority. Other Firemen who could not be re-deployed were sent to other divisions with steam engines as Firemen. In the same manner some of the Loco Khalasis who were rendered surplus in Palghat Division were absorbed in other departments in the same division as far as possible to save them from retrenchment and till their absorption they were continued as supernumerary hands in Palghat Division. The applicants as Loco Khalasis in Palghat Division rendered surplus were accordingly deputed to other departments and divisions before they could be finally absorbed as Diesel Khalasis. The applicants could be absorbed against certain vacancies of Diesel Khalasis which were reserved for Scheduled Caste and Scheduled Tribe candidates but could not be filled up. Accordingly the willingness of surplus Loco Khalasis including the applicants who had passed SSLC and belonging to Scheduled Caste community were invited vide the circular at Annexure-A1 dated 14.7.87. According to the applicants only the 1st and 3rd applicants gave their willingness on the presumption that they will be posted in the open line. Following upon the aforesaid circular the 4th respondent vide the order dated 11.8.87 issued orders transferring the applicants to the Diesel Shed at Erode as Electrical Khalasis with bottom seniority. The grievance of the applicants is that by such a transfer their previous service for the purpose of seniority has been wiped off even though their(except 1st and 3rd applicants) willingness for such a transfer had not been taken and even though their juniors had been retained in the original post. Their contention is that they were given joining time and transfer allowance which further shows that the transfer was ordered in the public interest and not at their request and accordingly they should not be given bottom seniority. In the impugned seniority list at Annexure-A3 they have been placed near about the bottom of the list on the basis of ^{the dates of} ~~their~~ joining the Diesel Shed between 29.8.87 and 17.9.87 as if their previous ten years ^{of} ~~years~~ of service had not existed. Their representations have not yet been disposed of. A copy of the last representation dated 25.3.89 filed by the second applicant has been appended as Annexure A4. They have also contended

that in identical cases of transfer from Engineering to Mechanical Department half of service in the previous department was reckoned for fixing seniority. Similarly for Gangmen transferred from Engineering to Traffic and Mechanical Departments counting of half of their previous service has been followed. Since in the applicants' cases the transfer has been made within the same department and for administrative reasons, this is all the more necessary that their entire previous service should be taken into account for seniority.

3. The respondents' case is that the applicants were rendered surplus due to dieselisation and it was to safeguard their interest and save them from retrenchment and not for administrative reasons that they were transferred to the Electrical Division. The principle followed in cases of absorption of surplus staff was to assign them bottom seniority as the persons serving the department where the surplus staff are absorbed, would not like their prospects ^{of promotion} to be endangered by the transfer of surplus staff from other departments. They have clarified that there is a provision for 10% intake of Engineering staff to other departments and appointments on compassionate grounds and filling up of 10% of Class IV vacancies in the Traffic Department by calling for volunteers from the regular Class IV staff of Civil Engineering Department. In their cases the benefit of seniority to the extent of 50% of service in the Civil Engineering Department is given. In case of the applicants there is no such special or general order. The respondents have flatly denied having received any representation from the applicants. They have also denied having received the representation copied at Annexure-A4 and have stated that the applicants are not telling the truth. They have further stated that the impugned order at Annexure-A2 clearly states that their seniority will be reckoned from the date of joining duty in the new post. Having sent no representation/ they cannot question the legality of the impugned order at this late stage. In the rejoinder the applicants have argued that while calling volunteers at Annexure-A1 it was not stated ~~whether~~ whether the transfer would be in the open line or Diesel Shed. The applicants did not give their willingness for transfer

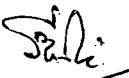
to Diesel Shed and therefore such a transfer without their consent while retaining their juniors in the steam side as Loco Khalasis even after dieselisation cannot deprive them of their previous service for seniority. They have further stated that of 26 employees whose willingness was sought at Annexure-A1, 18 persons including some juniors are still working as Loco Khalasi. They have also pointed out the case of another surplus Loco Khalasi who was transferred back to Palghat Division as C&W Khalasi by mutual transfer.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The impugned order dated 11.8.87 at Annexure-A2 transferring the applicants to the Diesel Shed clearly states that "their seniority, in the new unit will be reckoned only from the date they report for duty and will rank juniormost to all existing permanent/temporary Khalasis working at DSL Shed/ED". The applicants accepting this condition came over to the Diesel Shed on various dates in 1987. They cannot, at this late stage, challenge the legality of the order or claim seniority at Annexure-A3 on the basis of their previous service. They are estopped by the principles of waiver and acquiescence. However, the fact remains that persons who are junior to the applicants in the Palghat Division and mentioned in Annexure-A1 ~~willing~~ inviting willingness have been retained in the Palghat Division. The principle of 'last come first go' which is to be followed for retrenchment of surplus staff cannot, however, be followed for re-deployment ^{and absorption} of surplus staff. For re-deployment and absorption efforts should be made for absorbing the seniormost first by the principle of 'first come first absorbed'. The applicants contention that the circular at Annexure-A1 did not specifically mention whether the volunteers will be absorbed in Diesel Shed or open line and therefore their willingness cannot be taken to be valid, does not impress us. If they were in doubt they could have obtained a clarification or given a conditional willingness. In any case since the applicants named at Annexure-A1 along with others were specifically indicated as surplus even their willingness for absorption was not necessary. In case of surplus staff if

they do not express their willingness to be absorbed in posts offered to them they are liable to be retrenched rather than be kept without any work. In that context also the applicants have no claim to be retained in the Steam Loco Shed as surplus hands. In the facts and circumstances we see no merit in the application and dismiss the same with no order as to costs.


28/2/91

(A.V.Haridasan)
Judicial Member


28.2.91

(S.P.Mukerji)
Vice Chairman

n.j.j