

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.18/98

Date of decision : 31-08-2000

C O R A M

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. V.N.Karthikeyan
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam, Iruppanam.
2. C.B.Rajilal
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway, Trivandrum Division
Ernakulam Junction.
3. M.R. Pramothan
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam Junction.
4. K.Madhu Balan
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam Junction.
5. P. Pradeep Kumar
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam Junction.
6. T.K. Krishna Moorthy
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam Junction.
7. C.R. Jayaprakash
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam Junction
8. A.G. Ambujakshan,
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam, Iruppanam.

9. M. Vijayakumar
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam, Iruppanam.

10. K.K. Prathapan
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam, Iruppanam.

11. P.P. Lalan
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam, Iruppanam.

12. O. Sukumaran
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam, Iruppanam.

13. K.C. John
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam, Iruppanam.

14. N. Chandrabose
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam,

15. M. Rathinasapathy,
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam,

16. N. Pradeepkumar
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam,

17. I.V. Nandanam
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Cochin harbour Terminus.

18. P. Karthavarayn
Carriage & Wagon Khalasi Helper

Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Ernakulam,

19. P. K. Sureshkumar
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Cochin Harbour Terminus.

20. P. Palaniswamy
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Cochin Harbour Terminus.

21. M.K.Syleshkumar
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Cochin Harbour Terminus.

22. I. Sivakumar
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Kottayam.

23. Sunny Jacob
Carriage & Wagon Khalasi Helper
Carriage & Wagon Superintendent Office
Southern Railway,
Trivandrum Division
Trivandrum.

Applicants

By Advocate Mr. Majnu Komath

Vs.

the Chairman
Railway Board,
New Delhi.

2. Divisional Railway Manager,
Southern Railway,
Trivandrum Division
Trivandrum.

3. Divisional Personnel Officer
Trivandrum Divisiin,
Trivandrum.

Respondents

By Advocate Smt. Sumathi Dandapani

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O R D E R

When this O.A. came up for hearing on 31.8.2000 after hearing the learned counsel for the parties and considering the rival pleadings and documents brought on record, we pronounced the following orders in open Court:

"For reasons to be recorded separately, the present O.A. is dismissed. No order as to costs".

In pursuance of the above order the reasons for the above decision are recorded below:

2. Applicants in this O.A., 23 in number are working in Carriage & Wagon Unit in the Mechanical Department of the Trivandrum division of Southern Railway. Applicants at Nos 8 and 17 are Welders, those at 7, 13, 20, 22 and 23 are fitters and the rest are Khalasi Helpers. This O.A. has been filed by the applicants seeking the following reliefs:

i) to direct the respondents to determine seniority of the applicants in Annexure A-2 and A-3 on the basis of the principles laid down in A-4 and A-6 judgments with all consequential benefits.

ii) to issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case.

3. All the applicants were initially appointed as substitute. They claimed that they attained temporary status on different dates as shown in column 3 in the table at para 4.2 of the O.A.. Their date of regular absorption were on various dates in the years 1981, 1982, 1983, 1986 and 1988. They submitted that according to the rules governing conditions of service the date of appointment of the substitute for the purpose of counting of seniority was the



date of attainment of temporary status followed by regularisation without interruption. According to them they were entitled to count their seniority in the cadre of Khalasi w.e.f. the dates they attained temporary status. Respondents published seniority list on 19.7.85 under A-1 letter on the basis of attaining temporary status. Thereafter the respondents issued another provisional seniority list vide their letter No.V/P.612/IV/Mech1/C&W vol.5 dated 20.6.90. In this seniority list respondents altered the principles of assigning seniority on the basis of the date of attaining temporary status. They submitted that a copy of the seniority list was not available with them. They made representations against the provisional seniority list. They alleged that the respondents fixed seniority on the basis of date of empanelment by the competent authority and the principles based on the date of attaining temporary status was given up. Respondents published another provisional seniority list vide their No.V/P.612/Mech1/Vol.5 dated 27.5.91 again revising the principle from the date of approval of vacancies to which the empanelment was made. Applicants submitted their objections and demanded restoration of seniority on the basis of date of attaining temporary status. These representations were not considered and replied. Thereafter, the respondents published a consolidated seniority list of C&W Khalasi under A-2 letter No.V/P.612/IX/Mech1/Vol.6 dated 15.1.92. The applicants were at Sl. Nos. 339, 248, 249, 160, 245, 234, 202, 232, 131, 98, 148, 338, 56, 78, 255, 187, 88, 141, 185, 252, 94, 75 and 79 respectively in A-2 list. The applicants submitted representations requesting to assign seniority on the basis of temporary status but the same was not considered or replied. During the pendency of A-2 list the 3rd respondent again published A-3 provisional seniority list of Khalasi Helpers under A-3 letter dated 3.3.93 without properly determining the

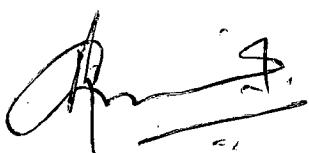


seniority in the cadre of Khalasis. In A-3 list the applicants were at Serial Nos. 287, 194, 195, 107, 192, 173, Nil, 171, 83, 56, 99, 286, 24, 42, 199, 130, 50, 94, 128, 196, 53, 39 and 43. They referred to A-4, A-5 and A-6 orders of this Tribunal in O.A.No.423/92, 1226/90 and 812/91 respectively. It was submitted that in view of the settled position as reflected in the above O.A.s they were entitled to refix their seniority on the basis of their attaining temporary status. Praying for extending the benefits in A-4, A-5 and A-6 orders of this Tribunal to the applicants also, applicants along with five others filed O.A. 204/94 which was disposed of by this Tribunal by A-7 order dated 2.2.94 directing the applicants to raise their grievances before the competent authority and directing the competent authority to consider the representations within four months from the date of receipt of the representations. The applicants filed A-8 representation dated 15.2.94 to the third respondent. They submitted that on receipt of A-9 reply dated 11.5.94, rejecting their request they took up the matter with their organisation and the Divisional Secretary of Southern Railway Mazdoor Union in which the applicants were members sent A-10 representation to the 3rd respondent requesting to review the A-9 order and to determine seniority of the applicants on the basis of the principles laid down in A-4 to A-6 orders. Thereafter, applicants sent another representation A-11 on 5.9.96 to the third respondent requesting to review A-9 order. But A-11 had not been replied. Hence they have filed this O.A. according to them the settled legal position in A-4 to A-6 and followed in A-1 list could not be altered by respondents and they were bound to follow principles declared in A-4 to A-6 in determining the seniority of the Khalasis in the C&W Wing. According to them the reasons stated in A-9 order to reject the request made in A-8 representation was not

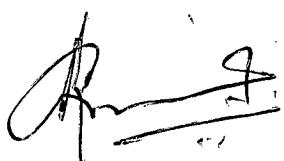


based on any legal provision. The contention in A-9 order that the date of attaining temporary status had no relevance to seniority was wrong and illegal.

4. Respondents filed reply statement resisting the claim of the applicants. They submitted that O.A. was barred by limitation. A-2 seniority list was published on 15.1.92. A-3 seniority list was published on 3.3.93. In A-2 the names of the applicants had been arranged according to their position in the panel for regular absorption as C & W Khalasis and not on the basis of the dates on which they attained temporary status. Since the applicants did not submit any representation against the seniority list, after such a long lapse of time, they were estopped from challenging the same which would result in upsetting the existing seniority which others were enjoying for the past so many years. In A-1 also the date of empanelment had been taken into account for assigning seniority. The employees were requested to submit their representations if any against the position assigned to them before 19.8.85. None of the applicants chose to prefer a representation against A-1 seniority list. Further, both A-4 and A-5 orders were pronounced in the year 1993 and 92 respectively and the applicants never cared to write in time for being extended the benefits of these orders. Even A-9 order is dated 11.5.94 but the present O.A. was preferred after more than three years. They denied that the applicants were making repeated representations against A-9. They submitted that the O.A. was liable to be dismissed since the same was hopelessly barred by limitation. It was further submitted that the applicants were seeking for change of their date of appointment based on the Temporary status attained by them in 1979 to 81 after more than two decades. The seniority lists were published giving opportunities to persons like the



applicants to represent against the seniority, the applicants had at no point of time cared to avail the opportunities given to them to prefer representation against the seniority list and hence they could not at such belated stage challenge the seniority lists. It was also submitted that if the claims of the applicants were allowed large number of persons would be adversely affected. Since the applicants had not chosen to implead any of those persons who would be affected by the re-fixation of seniority, the O.A. was liable to be dismissed for non-rejoinder of necessary parties. It was further submitted that the grant of seniority from the date of attaining temporary status was made applicable only in the case of those Carriage and Wagon Khalasis empanelled by Madurai and Palghat divisions as a special case. Subsequent seniority lists right from 1985 onwards had been made on the basis of seniority in the empanelment only. If the applicants really wanted their seniority to be reckoned from the dates of their attainment of Temporary Status, they ought to have represented in the year 1985 itself. While preparing the combined seniority list of C&W Khalasis of Madurai Division and Palghat division consequent to the formation of Trivandrum Division it was decided to adopt a policy for the same to the effect that seniority of substitutes/casual labourers who had been screened by the erstwhile divisions for regular absorption should be determined on the basis of the date of approval of the recommendations of the Screening Committee and the seniority list was published accordingly. A number of employees represented against this procedure the dates of empanelment being different for the employees of Madurai and Palghat divisions. Keeping in view the fact that the staff coming from one Division which had been prompt in empaneling the employees would get advantage over those from the other Division wherein the empanelment was conducted on a later



date, the Administration felt that their representations deserved detailed consideration. Accordingly, Chief Personnel Officer, Southern Railway, Madras advised that for the purpose of determining the combined seniority, the date of attaining temporary status from which day the employees of Madurai and Palghat Divisions entered the regular scale of pay could be the deciding factor provided their service had been continuous. Accordingly, as a special case the employees from Madurai and Palghat Divisions had been assigned seniority based on their dates of attaining temporary status and the seniority list was published on 1.4.81. The grant of seniority from the date of attainment of temporary status granted to the employees of Madurai and Palghat Divisions who came over to Trivandrum Division during its formation was not extended to any of the employees who had been empanelled in Trivandrum division. No other persons had been extended the benefit. As regards the order in O.A. No. 423/92 it was submitted that though Shri R. Somarajan Nair had been assigned seniority based on his temporary status in compliance of the order in the said O.A. his seniority had been re-assigned as per order in O.A. 341/95 taking into account the date of his empanelment. Therefore, the applicants could not have any claim on the basis of the order in O.A. 423/92. Regarding the seniority list published on 20.8.90 it was submitted that it was a list prepared revising the seniority of C&W Khalasis empanelled against vacancies on 3.12.81, 31.12.82 and 31.12.83. The revision was based on the orders of this Tribunal in O.A. No. 281/87, OAK 158/87 and O.A. No.31/88. They also relied on the ruling of this Tribunal in O.A. No. 1246/96 and provisions of the Indian Railway Establishment Manual Vol.I regarding the rights and privileges admissible to substitutes in support of their pleas and prayed for dismissal of the O.A.

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5. Applicants filed rejoinder in which they contested the pleas of the respondents regarding limitation, non-impleading of necessary parties and generally reiterated what was stated in the O.A.

6. We heard the learned counsel for the parties.

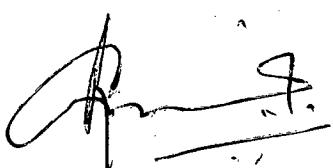
7. The relief sought for by the applicants in this O.A. is to direct the respondents to determine the seniority of applicants in A2 and A3 lists on the basis of the principles laid down in A-4, A-5 and A-6 orders. When this O.A. was admitted on 7.1.98 the question of limitation was left open to contest. Respondents resisted the claim stating that this O.A. was barred by limitation. We noted that the impugned seniority lists were published on 15.1.92 and 3.3.93 and this O.A. was filed on 31.12.97. We also noted that they had filed O.A. 204/94 with a prayer to direct the respondents to determine the seniority of the applicants in A-2 and A-3 on the basis of the principles laid down in A-3 to A-5 orders with all consequential benefits. By A7 order this Tribunal disposed of the said O.A. observing that the applicants may raise their grievance before the competent authority. Pursuant to the direction of this Tribunal in O.A. No.204/94 the third respondent passed A-9 order dated 11.5.94. If the applicants were not satisfied with this reply they ought to have challenged the same immediately thereafter. This O.A. has been filed in December, 1997. Applicants' plea was that they had represented the matter through their Union and the Union discussed the matter with the authorities many times. We cannot accept this plea as repeated representations will not revive the cause of action. We also noted from A-2 letter dated 15.1.92 under which the seniority list of C & W Khalasis



as on 20.12.91 was published that the same incorporated the revised seniority position assigned to the employees under the respondent's Office Memo dated 20.8.90 and 27.5.91. This gave an indication that the cause of action arose even earlier to 15.1.92. For ~~the~~ the above reasons according to us this O.A. is clearly barred by limitation.

8. The respondents have also taken the plea that the seniority lists were published long ago and if the said seniority lists were quashed it would affect a large number of employees and that all such persons have not been impleaded in this O.A. Applicants pleaded that they were not bound to implead the affected parties as refixation of seniority was necessitated due to the fault of the administration. In A-2 letter dated 15.1.92 we find that the seniority of items 8 to 200, 227 to 268, 272 to 285 were notionally fixed w.e.f. 31.12.80, 31.12.81 to 31.12.82, 31.12.83 & 31.12.84 as the case may be depending upon the vacancies against which they were empanelled based on the directive of this Tribunal in O.A.K No. 281/87, 188/87 and 31/88. Seniority position of 20 of the 23 applicants are within the serial numbers mentioned in this letter. We noted that the applicants in the above O.A.s had not been impleaded in the present O.A. Thus we find no merit in the plea of the applicants. They can not approach this Tribunal without impleading the parties who are likely to be affected by the reliefs sought for by them especially if such parties case had been adjudicated by this Tribunal earlier. Thus, according to us this OA suffers for non-joinder of necessary parties also.

9. We also noted the respondents' statement that though Shri Somarajan Nair was assigned seniority based on his temporary status in accordance with the orders of this

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Tribunal in O.A. 432/92, his seniority had been re-assigned as per the orders of this Tribunal in O.A. 341/95 taking into account his date of empanelment and the applicants had not controverted this statement of the respondents in the rejoinder.

10. Respondents have also placed reliance on the order of this Tribunal in O.A. 1246/96 in para 13 of the reply statement. The respondents stated as follows:

It is respectfully submitted that O.A. No. 1246/96 was preferred praying for reckoning the date of temporary status of the applicant therein was for the purpose of assigning seniority. When the said Original Application came up for final hearing, this Tribunal was pleased to hold as under:

In so far as the claim of the applicant in regard to seniority as against the persons named in the application but not impleaded is concerned, we are of the considered view that the applicant cannot take up this issue at this distance of time as the seniority list was published way back in the year 1981. Settled question of seniority cannot be unsettled and this principle is well settled."

This has not been controverted by the applicants in the rejoinder.

11. It is well accepted principle that the seniority should not be upset after long lapse of time as that would unsettled settled seniority positions, creating feeling of insecurity amongst employees. This is re-stated in the above order of this Tribunal and we respectfully agree with the same and we have already held this O.A. as barred by limitation.

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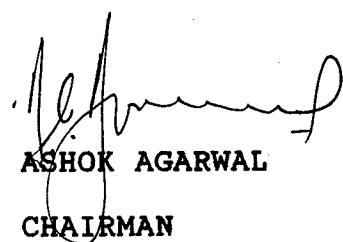
12. We also noted that A-9 order issued by third respondent pursuasnt to A-7 order of this Tribunal was not under challenge in this O.A. The applicants would not be eligible for the reliefs sought without such a challenge.

13. In view of the foregoing we dismissed this Original Application with no order as to costs on 31.8.2000.



G. RAMAKRISHNAN

ADMINISTRATIVE MEMBER



ASHOK AGARWAL

CHAIRMAN

kmn

List of Annexures referred in this order

A1 True copy of covering letter of the seniority list No.V/P.612/IV/Mechl. Vol. III dated 19.7.85 issued by the 3rd respondent.

A2 True extract copy of seniority list No. IV/P.612/IX/Mechl/Vol.6 dated 15.1.92 issued by the 3rd respondent.

A3 True copy of seniority list No. IV/P.612/IX/Mechl/Vol. 4 dated 3.3.93 issued by the 3rd respondent.

A4 True copy of the judgment in O.A. 423/92 dated 5.11.93

A5 True copy of the judgment in O.A. No. 1226/90 dated 30.10.92

A6 True copy of the judgment in O.A. No. 812/91 dated 9.10.92

A7 True copy of order in O.A. No. 204/9455 dated 2.2.94

A8 True copy of the representation dated 15.2.94 sent by the applicants and five others to the 3rd respondent.

A9 True copy of the orders No. V/P.612/IV/C&W/Vol.4 dated 11.5.94 issued by the 3rd respondent to the applicants and 5 others.

A-10 True copy of the representation dated 29.12.94 sent by the Divisional Secretary of Southern Railway Mazdoor Union to the 3rd respondent.

A11 True copy of the representation dated 5.9.96 by the applicants and 5 others to the 3rd respondent.