

Central Administrative Tribunal

Ernakulam Bench

Dated wednesday the 28th day of February 1990

Present:

Hon. Shri N.V. Krishnan, Administrative Member

and

Hon. Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION : 191/89

Applicants

1. E. Sukumaran
2. C. Devadasan

Versus

Respondents

1. The Union of India represented  
by the General Manager,  
Southern Railway,  
Madras
2. The Senior Divisional Personnel  
Office, Southern Railway,  
Palghat
3. The Divisional Personnel Officer,  
Southern Railway,  
Palghat.
4. Bridge Inspector,  
Southern Railway,  
Valapattnam,  
Cannanore.

M/s. K. Ramakumar and V.R. Ramachandran Nair, Advocates  
appeared for the applicants

M/s. M.C. Cherian, Saramma Cherian and T.A. Rajam  
Advocates appeared for the respondents.

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicants are at present working as Khalasis under the Bridge Inspector, Valapattanam in the Palghat Division of the Southern Railway. They are fully qualified for absorption in the Railway as regular employees. The Divisional Personnel Officer as per communication dated 1.3.1989 granted sanction for creation of 53 permanent posts of Bridge Khalasis under the de-casualisation scheme in the scale of Rs. 750-940. According to the applicants instead of filling the above posts by appointment of de-casualised casual labourers, the respondents have called for volunteers from regular Gangmen for regularisation as Khalasis against the posts created under the de-casualisation scheme. Hence, they have approached this Tribunal under section 19 of the Administrative Tribunals' Act, 1985. with the following reliefs:

- i) To call for the records leading upto Annexure-A to the extent is adversely affected by the applicants.
- ii) To direct that the applicants be considered for absorption as Khalasis in the pay scale of Rs. 750-940, pursuant to Annexure-A order and
- iii) To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. This case is opposed by the respondents placing reliance on two of the judgments of the Madras Bench

of the Tribunal evidenced by Annexure R-1(b) and (c).

3. We have considered identical question in detail in O. A. 613/89 and we think this case can be disposed of with the same directions which we have issued in the aforesaid case after considering the merits of the rival contentions. Accordingly, we dispose of the Application with the following directions:


- (a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance, be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation.
- (b) The regular post of Khalasis may be offered to such casual labourers in the divisional seniority list who are waiting for regularisation. But if any casual labourer is not willing to be absorbed as Khalasi, it can be presumed that he is not interested and he cannot later claim any higher seniority over any of his juniors who have accepted the post of Khalasi and thus got regularisation from an earlier date. All casual labourers should be warned in advance about this.
- (c) If on this basis, it is found that there still remain vacancies of Khalasis created in connection with the de-casualisation scheme,


these vacant posts can be filled up as a residuary measure by calling volunteers from regular Gangman and by conducting aptitude test amongst them.

(d) The inter-se seniority as between the casual labourers appointed as regular Khalasis and regular Gangmen appointed as regular Khalasis shall be determined from the date from which the persons were first regularised either as Gangmen or as Khalasis.

(e) This order, however, will not apply to the filling up of normal vacancies of Khalasis which arise due to retirement, promotion, death etc. of the regular incumbent. Such vacancies can be filled up by the Respondents by calling for volunteers from regular Gangmen. The Gangmen so inducted will count their seniority from the date they were first regularised as Gangmen.

4. There will be no order as to costs.

  
(N. Dharmadant) 28.2.90.  
Judicial Member

  
28/2/90  
(N. V. Krishnan)  
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

9  
R.A No. 63/90 ( O. A. No. 191/1989 198  
xxxxx No. xxxxx

DATE OF DECISION 20.7.1990

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

Mr M.C Cherian Advocate for the Applicant (s)

Versus

E.Sukumaran & another Respondent (s)

M/s. K.Ramakumar , Advocate for the Respondent (s)

V.R.Ramachandran Nair

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

In this Review Application filed by the Railway, the respondents in O.A 191/89, the limited request made, owing to the difficulty in implementing the directions in the judgment, are as follows:-

- (i) The directions contained in clauses (a) and (b) in the operative portion of our judgment dated 28.2.1990 may be limited to the casual labourers who have been empanelled on the basis of screening for regular absorption on divisional seniority.
  - (ii) Necessary provisions may also be included in the directions in clauses (a) and (b) for conducting an aptitude test among the casual labourers who volunteer for being absorbed as regular Khalasis.
  - (iii) The seniority referred to in clause (a) of the direction should be clarified as the seniority in the post of Khalasi on the basis of the date of absorption as Khalasi
- 1/1/91

2. These grounds are strongly opposed by the respondents, the applicants in the Original Application. According to them there is no difficulty for implementing the directions in the judgment and no error on the face of the record and that the review petitioners have not made out any case for interference by way of review. If this petition is allowed, they will be deprived of the reliefs already granted by the judgment.

3. We have considered the contention of both the parties. In the course of the argument it was also suggested by the learned counsel for the review applicants that the aptitude test mentioned in clause(c) of last but one para would be made applicable to Khalasi also.

4. We see considerable force in the request made by the applicants in the review petition. The clarifications sought for in this petition are only very minor and deserve consideration especially because the Railway is finding some difficulty in the actual implementation of the directions. Even though there is no error apparent on the face of the record as alleged by the applicants in the Original Application, in the interest of justice, we are of the view that slight changes in the last but one paragraph of the judgment are required, which we think can be incorporated without in any manner affecting detrimentally the rights of the applicants.

5. Accordingly we are inclined to effect the following changes and addition in the last but one paragraph of the judgment:

- (i) In clause (a) of that para of the judgment after the word 'regularisation', the following may be added viz. 'according to their seniority in the Division and after subjecting them

to an aptitude test'.

- (ii) In clause (d) after the word 'regularised' the words 'either as Gangmen or' be deleted.
- (iii) For the last sentence in clause (e), the following sentence may be substituted. 'The Gangmen so inducted will count their seniority from the date they were absorbed as Khalasis.'

6. After incorporating the above changes, clause (a), (d) and (e) of the original judgment will read as follows:-

- "(a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance, be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation according to their seniority in the Division and after subjecting them to an aptitude test.
- (d) The inter-se seniority as between the casual labourers appointed as regular Khalasis and regular Gangmen appointed as regular Khalasis shall be determined from the date from which the persons were first regularised as Khalasis.
- (e) This order, however, will not apply to the filling up of normal vacancies of Khalasis which arise due to retirement, promotion, death etc. of the regular incumbent. Such vacancies can be filled up by the Respondents by calling for volunteers from regular Gangmen. The Gangmen so inducted will count their seniority from the date they were absorbed as Khalasis.

7. The Review Application is allowed to the extent shown above and the judgment passed by us in this case on 28.2.1990 is reviewed and modified as above. The modified copy of the judgment may be issued to all parties in this case.

(N.DHARMADAN)  
JUDICIAL MEMBER

20.7.90

(N.V KRISHNAN)  
ADMINISTRATIVE MEMBER

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

CCP 26/91 in  
O. A. No. 191/89  
~~J. A. No.~~ 199

DATE OF DECISION 28.1.92

E. Sukumaran and another Applicant (s)

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

Versus

M. Dharmalingam, Sr. Divisional  
Personnel Officer, Southern Ry Respondent (s)

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

CORAM :

The Hon'ble Mr. N. V. KRISHNAN, 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? 7
3. Whether their Lordships wish to see the fair copy of the Judgement? 7
4. To be circulated to all Benches of the Tribunal??

JUDGEMENT

MR. N. V. KRISHNAN, ADMINISTRATIVE MEMBER


This CCP has been filed by the applicants in the original application complaining that the respondents have not complied with the direction issued by this Tribunal in para 3 of the judgment dated 28.2.91 in O.A. 191/89. The respondents have filed a reply in which it is stated that the applicants are not senior enough in the divisional seniority of casual labourers. It is in terms of the decision of the Tribunal that the Ext. R-1 and R-2 orders have been passed.

2. However, when the matter came up for final hearing today, the respondents produced order dated 26.11.91 by

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which 111 persons have been appointed temporarily as Khalasis after scrutiny including two applicants in the CCP. In the circumstances, we notice that the applicants have got appointment and nothing more remains to be adjudicated in this CCP. This is accordingly closed.

  
28.1.92

(N. DHARMADAN)  
JUDICIAL MEMBER



(N. V. KRISHNAN)  
ADMINISTRATIVE MEMBER

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