

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 199 of 2008

Wednesday..., this the 1st day of April, 2009

C O R A M :

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

1. K. Reghupathy,
S/o. S. Krishnan,
Substitute Welder/Technician,
Office of the Senior Section Engineer/
Electrical/Works, Southern Railway, Palghat,
Residing at New Street No. 36/5,
Poddanur, COIMBATORE : 25

2. P.K. Aravindakshan,
S/o. Sankaranarayanan,
Substitute Wireman/Technician,
Office of the Senior Section Engineer/
Electrical/Works, Southern Railway, Palghat,
Residing at "Amritha Nivas", Kottayi Post,
PALGHAT DISTRICT.

... **Applicants.**

(By Advocate Mr. T.C.G. Swamy)

v e r s u s

1. Union of India represented by the
Secretary to the Government of India,
Ministry of Railways, Rail Bhavan,
NEW DELHI.

2. The General Manager,
Southern Railway,
Headquarter's Office,
Park Town Office, CHENNAI – 3

3. The Chief Personnel Officer,
Southern Railway,
Headquarter's Office,
Park Town Office, CHENNAI – 3



4. The Senior Divisional Personnel Officer,
 Southern Railway, Palghat Division,
 PALGHAT. ... Respondents.

(By Advocate Mr. Sunil Jose)

(The Original Application having been heard on 13.03.09, this Tribunal
 on 1-4-09 delivered the following) :

O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicants No. 1 and 2, working as substitute welder and wireman respectively in the electrical department of Palghat Division of Southern Railway, with 26 years of service in their respective posts, and who had fulfilled all the requirements for absorption as skilled artisans (technicians), claim that they are entitled to be promoted under the 25% quota vacancies earmarked for D.R. quota from 1991 onwards.

2. The capsulated facts of the case are as under:-

- (a) The applicants entered the service under the Respondents in 1981 in their respective trades on regular basis vide Annexure A-1 order dated 19-06-1985.
- (b) In terms of para 159 of the Indian Railway Establishment Manual (IREM), the vacancies in the cadre of skilled Artisans (Technicians) are to be filled up –



- (a) 50% by promotion
- (b) 25% by direct recruitment; and
- (c) 25% from among serving employees with certain qualifications (associated with DR quota)

(c) Again, in respect of (a) above, vide Para 2007 of IREM, Vol II, half the promotional quota vacancies are to be filled up by absorption of skilled casual labourers/substitute Technicians on the basis of length of service.

(d) Apart from the above, provision also exists for absorption of the applicants as Electrical Khalasis. Vide Annexure A-2 order dated 31st January 1991, the applicants were screened and empanelled for Temporary Electrical Khalasis in the scale of Rs 750 – 940 against vacancies upto 31st December 1990.

(e) Option was asked, vide Annexure A-3, to such persons as named in Annexure A-2 either to get absorbed as Electrical Khalasis or to participate in selection for absorption in skilled grade against the 25% quota vacancies earmarked for D.R. quota, vide 2(c) above and in the event of such option being given, such optees be not relieved to take up the post of Temporary Electrical Khalasis. The applicants had opted for such selection as skilled workmen, vide Annexure A-4 communication dated 31st January 1992. Annexure A-6 is reiteration of contents of Annexure A-3, vis-à-vis the applicants. Thus, by Annexure A-6 office order No. J/E 31/93, the applicants were permitted to continue as Skilled casual labourers at W/PGT till such time sanction exists or till they are absorbed as skilled artisans under the 25% quota earmarked for serving semi skilled and skilled staff, whichever date is earlier.

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(f) Vide Annexure A-7 communication dated 12th August 1993, the applicants were alerted for participating in the trade test against the 25% of the vacancies earmarked for serving employees.

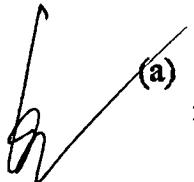
(g) It is to be pointed out that earlier in 1991, when the applicants were eligible to be considered for absorption under the 25% skilled category quota, certain Khalasis who had accepted promotion under Khalassi-Khalassi Helper line challenged the same, vide OA No. 1626 of 1991. The Tribunal, by an interim order restrained the railways from regularizing the applicants in the skilled category, but later on by Annexure A-8 order, the said OA was dismissed. It was thereafter that the applicants were alerted as stated in Annexure A-7 above. Again, the decision vide Annexure A-7 was challenged by some other Electrical Khalasis in OA No. 1618/93, wherein also, as an interim order, status quo was directed vide Annexure A-9, but in the final hearing, the OA was disposed of with a direction to the railways to dispose of the pending representation filed by the applicants therein in this regard. Annexure A-10 order dated 13th January 1995 refers. It was thus, in June 1995 that the test could be conducted vide Annexure A-11 order dated 19-06-1995. Here again, the applicants in OA No. 1618/93 challenged the decision of the respondents in OA No. 904/95, wherein challenge was also made to the order dated 19th June 1995 whereby the applicants were called for trade test and the respondents clarified that the case of the applicants in the present OA come within the scope of paragraph 159 (1) (iii). While the OA was pending, the railways ordered for absorption of the applicants as Electrical Khalasis, on the basis of the result of the screening committee meeting held 24-03-1997, vide Annexure A-14 dated 31-03-1997. The absorption was effective from 31-08-1996. The said order

contained a rider that the selection was subject to outcome of the decision in OA No. 904/95.

(h) Annexure A-14 order not being to the advantage of the applicant, who was desirous of being absorbed in the skilled grade under the 25% quota, applicants penned identical representations, one of which has been annexed as Annexure A-15, dated 12-04-1997. The said OA 904/95, was later on dismissed, vide Annexure A-12 order dated 30th September 1997.

(i) With the dismissal of the above OA, the applicants penned another representation, vide Annexure A-16 letter dated 21-10-1997 from Applicant No. 1. Respondents through their internal correspondence called for educational certificates of the applicant vide Annexure A-17 letter dated 03-07-1998. But there was no communication thereafter despite representations dated 04-12-2001, 29-11-2004 and 12-05-2005. Meanwhile, juniors to the applicants (Shri K. Mathiyalagan/CBE and Shri S. Asokan/MTP etc) were promoted as Technician Gr. II against the 25% earmarked quota. Hence the applicants filed a joint representation dated 08-08-2005, vide Annexure A-18.

(j) It was by Annexure A-19 communication dated 21-07-2006 that the Divisional office requested approval of the Competent authority for absorption of the applicants for the skilled category under the 25% quota. Despite answering the query of the CPO, vide Annexure A-20 communication dated 07-05-2007 no further action was taken and hence this OA has been filed with inter alia the following specific prayer :-


(a) To declare that the non-feasance on the part of the respondents to regularize the applicants as skilled Artisans (Electrical

Fitter/Power/Train Lighting as the case may be) against 25% of the promotional quota/vacancies meant for them and which existed on 31-12-1990 is highly arbitrary, discriminatory and unconstitutional.

(b) To direct the respondents to regularize the applicants as Electrical fitters/Technicians and grant them all the consequential benefits including seniority and fitment on and with effect from 01-01-1991 or from such other date as may be found just and proper by this Tribunal.

3. Respondents have contested the O.A. According to them, there are no sanctioned posts of welder/wireman in skilled grade in the Electrical Department for the continuance of the applicants (Para 9 of counter). In order to consider them for absorption as Technician Gr III against promotional quota after conducting requisite trade test, Headquarters' approval has been sought and a reply is still awaited from Headquarters. The applicants had expressed their willingness only in 1992, vide Annexure R-1 and R-2 and thus, the question of absorption as skilled artisans from 1991 does not arise.

4. In their rejoinder, the applicants have stated that option was given as asked for by the respondents and for any delay in absorption, it is only on account of inaction on the part of respondents and also on account of various OAs filed before this Tribunal against regular absorption. Once the OA was dismissed, the position as it existed at the time of filing of the OA must have been restored and if that is so the applicant ought to have been considered and regularly absorbed against vacancies, which were in existence.

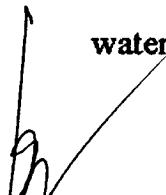
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5. In their additional reply, the respondents have contended that the OA was dismissed in 1997 and as to the contentions of the applicant that they had made representations earlier, they are put to strict proof. Reference was invited to decision in AIR 1990 SC 10 wherein the Apex Court has stated that repeated unsuccessful representations would not surmount the law of limitation. Para 2 of the Additional reply refers.

6. Counsel for the applicant argued that the applicant expressed their willingness as early as in 1992 and it was due to certain court cases that their absorption was not possible. This situation prevailed till 1997 and once the O.A. filed by others against the absorption of the applicants herein had been dismissed, subject to availability of vacancies, the respondents ought to have proceeded with regularization of the applicants immediately thereafter. They had failed to do so.

7. Counsel for the respondents raised the limitation point and also submitted that the case is with the headquarters for their decision.

8. Arguments were heard and documents perused. First as to limitation. The said argument as contained in para 2 of the additional reply cannot hold water in view of the fact that a positive action was proposed by the Divisional

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Office as could be seen from Annexure A-19 which is dated 21st July 2006, followed by Annexure A-20 which is dated 7th May 2007.

9. Now on merits. Annexure A-3 order dated 21-10-1991 is specific that those who opt for absorption under the 25% vacancies earmarked for DR quota be not relieved to join the regular posts until they gave their option. Option was given vide Annexure A-4 communication dated 31-01-1992. The unit had been directed not to relieve the applicants, vide Annexure A-5. Permission was given for their continuance as skilled casual labourers at W/PGT, till such time sanction exists or till they are absorbed as skilled artisans against 25% quota earmarked for serving semiskilled and unskilled staff whichever date is earlier, vide Annexure A-6(23-06-1993). The applicants were alerted to participate in the screening test for the skilled artisans post under the 25% quota for D.R. Annexure A-7 order dated 12th August 1993 refers. Of course, even prior to the above, there had been a situation where the applicants could not be allowed to participate in trade test which continued till 1997 as explained in the succeeding paragraph.

10. The applicants were not relieved to join the post of regular Electrical Khalasi as early as in February 1992. But for the interim stay of status quo granted first in respect of OA No. 1626/1991 (vide para 4(i) of the O.A), they could have participated in the trade test that would have taken place thereafter.



After the above O.A. was dismissed on 11-06-1993, vide Annexure A-8, the restraint order did not any more exist. However, vide Annexure A-9 order dated 24th September, 1993, in another OA No. 1618/1993, a similar order was passed and status quo maintained. This OA was also dismissed vide Annexure A-10 order dated 13th January 1995. It was thereafter that the respondents alerted the applicants to participate in the trade test under the 25% quota earmarked for DR. Annexure A11 refers. Here again, there was a restraint order in OA No. 904/1995, which OA came to be dismissed vide order dated 30th September 1997 at Annexure A-12. The applicants having been very keen in functioning as skilled artisans, declined to move as Khalasi on regular basis, though they had been posted as such vide Annexure A-14. It is to be pointed out that all along, when others filed the OA against the respondents' proposal to absorb the applicants as skilled artisans, the respondents have contested such O.As. To cite an example, vide para 3 of Annexure A-8, the Tribunal had, while referring to the reply filed by the respondents, had stated, "*Regarding respondents 3 and 4, it is stated in the reply statement that they are skilled casual labourers who have chosen to remain as such even after empanelment for regular absorption as Group D employees. Thus, unlike the applicants, they have foregone their regular absorption as Group D railway servants and decided to continue as skilled casual labourers with the attendant risk of retrenchment and other insecurities in service. When regular vacancies of skilled artisan arise, they are entitled to be considered for regularisation along with similarly situated*

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skilled labourers in terms of para 2512 of IREM." This commitment should be complied with, without any reservation by the respondents.

11. Once the OA No. 904/95 as well as the previous O.As, stood dismissed, the net result is that the situation that existed prior to filing of the OA would be restored there being no restraint over regularization of the applicants. If the applicants had been found suitable to be absorbed as skilled artisans (technicians) after the final order in OA 904/1995 was passed, applicants claim for regularization from 1991 itself is in one way justified, for the respondents were disabled to ascertain the suitability of the applicants in 1991 or thereafter due to the restraint orders passed by the Tribunal successively in OA No. 1628/91, 1618.93 and 904/95. Nowhere it has been the case of the respondents that there were no vacancies to absorb the applicants against the 25% skilled quota under D.R. If an analogy could be drawn from the provisions of Para 219 (m) of the I.R.E.M., which provides for retrospective effect of qualifying in the examination conducted later under certain specific circumstances, the applicants' claim is fully justified. In any event, at least from the date the applicants were permitted to participate in the trade test for the post of ELF Gr. III, vide Annexure A-11, the applicants are entitled to the benefit that arise out of their qualifying in the trade test or verification of their certificate, which took place in July 1998.



12. As regards the contention vide para 9 of the counter that there are no sanctioned posts, the same cannot be true at all. For, the quota through which the applicants seek absorption is 25% of the D.R. Quota. Thus, if there were four vacancies, two would go for promotion and the remaining two for direct recruitment in which half of the same i.e. one would be for absorption of the skilled casual labourers. If there be no post to absorb the applicants from June 1995 when they had been trade tested, it would mean that there would have been no post for the rest of 75% (50% by promotion and 25% by D.R)! This situation is inconceivable. The applicants, on their being found suitable for absorption, ought to have been absorbed against the then existing vacancies as of 1995 or against vacancies that arose in the immediate future, under their own lawful quota of 25%.

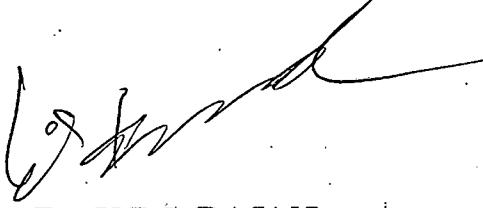
13. Respondent No. 3, before whom the case is at present pending, vide Annexure A-19, as confirmed in para 10 of the reply and para 3 of the additional reply, should therefore, consider the case of the applicants, keeping in view the above considered view of this Tribunal and pass suitable orders in this regard. The applicants would be entitled to the consequential benefits as well. The O.A. is allowed to this extent. Time calendared for the same is three months.

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14. Under the circumstances, there shall be no orders as to costs.

(Dated, the 1st April, 2009)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(Dr. K. B. S. RAJAN)
JUDICIAL MEMBER

CVR.