

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED TUESDAY, THE FIFTH DAY OF SEPTEMBER ONE THOUSAND
NINE HUNDRED EIGHTY NINE

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

TRANSFERRED APPLICATION NO. K-325/87
(O.P No.8349/83)

&

ORIGINAL APPLICATION NO. 210/89

In T.A.K-325/87

1. A. Sainul Abdeen
2. V. Andy
3. K. Chandukutty

.. Petitioners

v.

1. Union of India represented by the
General Manager, Southern Railway,
Madras.
2. Divisional Railway Manager,
Southern Railway,
Trivandrum.
3. Senior Divisional Engineer,
Southern Railway,
Trivandrum.
4. Assistant Engineer, Southern Railway,
Quilon.
5. Bridge Inspector, Southern Railway,
Quilon.

.. Respondents

M/s. K. Ramakumar, C.P Ravindranath
& E.M Joseph

.. Counsel for the
petitioners

Smt. Sumati Dandapani

.. Counsel for
R1 to R5.

M/s. Ashok M. Cherian &
Poly Mathai

.. Counsel for R-6

In O.A No. 210/89

1. M. Lakshmanan
2. A. Joseph
3. M.T. Radhakrishnan
4. M.A Aboobacker
5. K. Velayudhan
6. P. Surendran
7. L. Subramanian
8. M. Balasubramanian
9. A. Venu
10. V. Balasubramanian
11. K. Raman
12. K.P Anirudhan

.. Applicants

1. The Divisional Personnel Officer,
Divisional Office,
Personnel Branch,
Southern Railway,
Trivandrum.
2. The Union of India, represented
by the General Manager,
Southern Railway,
Madras.
3. The Chairman,
Railway Board, Railway Bhavan,
New Delhi-1.

.. Respondents

M/s.K.Ramakumar &
V.R Ramachandran Nair

.. Counsel for
the applicants

Smt.Sumathi Dandapani

.. Counsel for
the respondents

O R D E R

Shri S.P Mukerji, Vice-Chairman

Since common questions of law, facts and reliefs are involved in the first petition dated 26th September, 1983 filed before the High Court of Kerala and transferred to the Tribunal under Section 29 of the Administrative Tribunals Act and the second application dated 27th March, 1989 filed under Section 19 of the Administrative Tribunals Act, they are disposed of by a common judgment, as follows.

2. The petitioners in the Transferred Petition who have been working as Khalasi in the office of Bridge Inspector, Southern Railway, have challenged the impugned order dated 20.9.83 at Ext P-4 by which the regular vacancies of Bridge Khalasis in the scale of Rs.196-232 were proposed to be filled up by selection of Gangmen in the scale of Rs.200-260. The petitioners have been holding the posts of Khalasis attached to the Bridge Inspector's office, Quilon as casual workmen with temporary status. Their contention is that in implementation of the policy of the Railway Board for absorption

of casual workers in regular cadre under the decasualisation scheme, they have got prior claim to be absorbed as Bridge Khalasis in the regular vacancies which have remained unfilled for a long time in the Trivandrum Division. The respondents, however, instead of filling up the vacancies by screening the casual Khalasis, were proposing to fill up the vacancies by selecting permanent Gangmen in the scale of Rs.200-260. (Injunctions)
Their argument is that these regular Gangmen belong to a different seniority unit and are in the higher scale of Rs.200-260 and they cannot be imported to fill up the vacancies of Bridge Khalasis in the lower scale of Rs.196-232, thus encroaching on their prospects of regular absorption in the cadre of Bridge Khalasis.

3. In the other application, the twelve applicants have also been working as Casual Labourer since 1979-80 and have been granted temporary status with monthly scale of pay under the Inspector of Works, Southern Railway, Ernakulam. Under the decasualisation scheme for absorption of Casual Labourer, the Railway Board sanctioned 100 posts of Khalasis under the Inspector of Works and 45 posts of Bridge Khalasis prospects in the Trivandrum Division. Their grievance is that instead of considering them for absorption against these posts under the decasualisation scheme, the respondents vide the impugned order dated 2.3.89 at Appendix I invited volunteers from regular cadre of Gangman and disqualified Casual Labourer/Substitute as ineligible. The revised scale of Khalasis is Rs.750-940 whereas volunteers were called for from the grades of Rs.775-1025 and below.

They have also argued that for the additional posts under the decasualisation scheme, they should have preference over others who are already not only in the regular cadre, but in the higher scale. The respondents have argued that Casual Labourers can be absorbed only as Gangmen and not as Bridge Khalasis or Khalasis. Besides, some Khalasis had earlier been absorbed as Gangmen and it will be unfair if their juniors are absorbed directly as Khalasis without considering them as Gangmen. They have justified the procedure adopted by them by saying that by absorbing the Gangmen as Khalasis, the vacancies in the cadre of Gangman would be filled up by absorbing the Casual Khalasis.

4. We have heard the arguments of the learned Counsel for the petitioners and the applicants on one hand and the respondents on the other and gone through the documents carefully. We are not impressed by the arguments of the respondents that Casual Khalasis should be first absorbed as Gangmen and the regular posts of Khalasis should be filled up by selection of regular Gangmen. Firstly, it has to be noted that Gangmen are ^{already not only the} enjoying security of a regular cadre, but are also in a higher pay scale than that of Khalasis. The Gangmen are in the old scale of Rs. 200-260 revised to Rs. 775-1025, while the Khalasis are in the lower scale of Rs. 192-232 revised to Rs. 750-940. To select Gangmen in the higher scale for the post of Khalasis in the lower scale is itself anomalous. It becomes doubly so when such 'demotion by selection' is made against posts which are meant

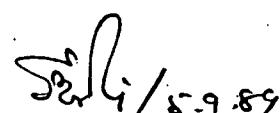
for decasualisation of casual employees who have been working in the same type of work as Khalasis or Bridge Khalasis. The respondents' argument that Khalasis senior to the applicants before us who had opted to be regularised as Gangmen would feel aggrieved if the applicants are considered for appointment as regular Khalasis, does not carry conviction. The senior Khalasis who ^{have} are already been absorbed as Gangmen in the higher scale cannot and should not feel aggrieved if their juniors are absorbed as Khalasis in the lower scale.

5. The respondents' argument that Casual Khalasis should first be absorbed as Gangmen before they can be considered for the regular post of Khalasis is also self-contradictory. The posts of Khalasis were created under the decasualisation scheme. If Casual Labourer can be decasualised or regularly absorbed only as Gangmen, as the respondents would have us to believe, there was nothing to prevent the Railway Board from creating the additional posts under the decasualisation scheme in the cadre of Gangman instead of Khalasis. It looks strange that under the decasualisation scheme additional posts are created in the cadre of Khalasis and the Casual Khalasis are disqualified even from being considered for absorption as regular Khalasi. The anomaly is compounded further by the fact that having disqualified the casual Khalasis, the respondents are seeking volunteers from the higher grade of Gangman to opt for being absorbed as regular Khalasis in the lower scale. It also looks

anomalous that the applicants should first be absorbed as Gangmen in the higher scale and then only considered for appointment in the lower scale of Khalasis. The ^{conceived and} entire scheme appears to be implemented in an unusual manner.

6. In the facts and circumstances we allow the Transferred Petition and the Original Application and direct that the petitioners and the applicants should also be considered as eligible for absorption in the posts of Khalasis in preference to those already absorbed in regular posts. The posts under the decasualisation scheme should be filled up by suitable casual workers based on the Divisional seniority list of such casual workers through screening and test in accordance with relevant orders and instructions. The impugned orders and notices issued to the contrary will stand modified or cancelled to this extent. However, we make it clear that the respondents will be at liberty to consider regular Gangmen also for the post of Khalasis, only after exhausting the list of eligible Casual Labourers. In the latter eventuality, ^{the vacancies} _{resulting} ⁱⁿ created in the Gangman's cadre by the induction of Gangmen as Khalasis will be made available to the eligible casual workers who remain unabsorbed and in accordance with their Divisionwise seniority. There will be no order as to costs.


(N.DHARMADAN) 5.9.89
JUDICIAL MEMBER


S.P. MUKERJI/5.9.89
(S.P. MUKERJI)
VICE CHAIRMAN

SPM & ND

Mr. V R Ramachandran Nair for the applicant

Smt. Sumathi Dandapani for the respondents

List for further direction on the CCP on
27.7.90.

12.7.90 *by Subj.*

SPM & ND

K. Ravakumar by proxy counsel for the petitioner
Mrs Preethi for respondents (Proxy)

The learned counsel for respondents
wishes to file reply to the CCP and
undertakes to do so within two weeks
with a copy to the original service
applicant. List for further direction
on the CCP on 17.8.90.

by Subj.

27/7/90

NVIC & ND

Mr V R Ramachandran Nair for applicant
Mrs S. Dandapani for respondents

At the request of the counsel
for the applicant, call on 29.8.90

by Subj.

17/8/90

29-8-90

SPM & AVH

Mr VR Ramachandran Nair for petitioner
Mrs Sumathi Dandapani for respondents

ORDER

The applicants have moved this Tribunal to
initiate action for contempt against the respondents *for*

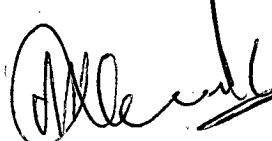
non-implementation of the order in OA-210/89 inspite of the fact that the order was passed as early as on 5.9.1989. When the application came up for hearing, the learned counsel for the respondents submitted that since a doubt is entertained by the respondents as to how to fix the seniority between the casual khalasis if absorbed directly as regular khalasis and the Gangmen promoted as Khalasis and that for that reason also the matter is being delayed and that there is no wilful defiance on the part of the Railway Administration to implement the order. She also brought to our notice that an application has been filed on behalf of the respondents seeking certain clarifications in regard to the matter of fixing seniority etc. and that on receipt of the above clarifications, the matter will be immediately attended to and the order complied with without any further delay. We make it clear that sufficient clarification regarding the aspects pointed out by the learned counsel for the respondents ~~has been~~ having made in the order of the Tribunal in OA-613/89 in which a case arose in identical facts and circumstances as in this case. So the respondents ~~can~~ in implementing ^{the} ~~order~~ the judgement in this case adopting the guidelines given in the final order in OA-613/89. The learned counsel for the respondents submitted that the orders will be complied with without ~~further~~ ^{leave} ~~much~~ delay. At any rate, to allow it entirely in the hands of the respondents to implement the order at their sweet, ~~and~~ well and pleasure will not in the interest of justice. So we make it clear that the final order in OA-210/89 must be complied with

-3-

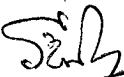
within a period of three months from today and if that is not done, the respondents will be answerable for contempt of this Tribunal.

With the above observation, we close this petition and discharge the notice.

A copy of this order may be delivered to the learned counsel for the respondents by hand.

 29/8/90

(AV HARIDASAN)
JUDICIAL MEMBER

 29.8.90

(SP MUKERJI)
VICE CHAIRMAN

29-8-1990

Order communicated
on 4.9.90.

FILE CLOSED

12/9/90

SPM & ND

13.3.90.
Smt. Sumathi Dandapani for the Review Applicant
Mr. V. R. Ramachandran Nair for the respondents

*F.O. communicated
on 21.3.90
P.S.B.*
Heard the learned counsel for both the parties. The learned counsel for the Review Applicant submitted that after going through the judgment in O.A. 186/89 and connected cases, there is no satisfactory ground for persuading the Tribunal to review the judgment already rendered in the O.A. Accordingly we dismiss the Review Application.

S. Srinivas

13.3.90

R.A. No. 34/90.....

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by _____
The Dist. Personnel Officer & 2 Ors. (Applicant)
Respondent in OA/TA No. 210/89 seeking a review of
the order dated 5-9-89 passed by this Tribunal in the
above noted case.

As per Rule 17(ii) and (iii), a review petition shall
ordinarily be heard by the same Bench which passed the order,
and unless ordered otherwise by the Bench concerned, a review
petition shall be disposed of by circulation where the Bench
may either dismiss the petition or direct notice to be issued to
the opposite party.

The Review petition is therefore, submitted for orders
of the Bench consisting of Hon. Shri S. P. Mukherji (V.C.)
and Hon. Shri N. Dharmadoss Member (J.J.)
which pronounced the order sought to be reviewed.

2/3

4/3/90

PS to Hon. Shri S. P. Mukherji
V.C.

Hon'ble Vice-Chairman may kindly see.

2/3 Hon'ble V.R.

We may hear both the
parties, especially on condonation
of delay.

5/3/90

Hon'ble Shri N. Dharmadoss

7/3/90

(May be on 13/3/90)

Notice to both sides
issued on 8-3-90

7/3/90

30 (38)

B.C.P
5-ii

7/3/90

9/3/90

R.A. No. 93/90.....

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by The J.P.O., S.Rly, Tum & Ors. (Applicant) Respondent in OA/TA No. 210/89 seeking a review of the order dated 5-9-89 passed by this Tribunal in the above noted case.

As per Rule 17(ii) and (iii), a review petition shall ordinarily be heard by the same Bench which passed the order, and unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either dismiss the petition or direct notice to be issued to the opposite party.

The Review petition is therefore, submitted for orders of the Bench consisting of Hon. Shri N.V. Krishnan, Member (A) and Hon. Shri N. Dhasanadas Member (T) which pronounced the order sought to be reviewed.

31/8/90

31/8
PS to Hon. Shri N. Dhasanadas, Member (T) There is long delay in filing this RA, the office concerned is not to be held responsible. Honble N.B.K. agrees with the member. 5/9/90

Central Administrative Tribunal
Review. The application is filed as a review application on OA 210 of 1989. Date of 1st com was 19/8/90.

by Haila VC & Haila read on 21/8/89
rechts (T) 7/8/89 by R.A. may be
here of Nat. Beach.

The grounds on P. 4 9.
The application does not approach
the severance of the land on 21/8/89
because in 1st part (Ex R. 3)
there are no directions a, b etc.
These corner directions are in
on 342/89, disposed of by N.J. Land
Court O, I agree.

The application is therefore
quite confused. Either this may be
got for the delayed answer
or the matter be taken up before
Haila VC & Haila on 21/8/89
rechts O.

Q
691

Haila rechts (T).

(d) and (e) answer
Yes by
8/9.

Re: to Hon. Sri S.P. Mukerji

V.C. I agree

list for hearing before
VC & Hon'ble J.M(I) on any
Friday after giving notice to
both the parties.

Sub.

DR (S) RL

13/9
13/9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

R.A. No.5/91 in O. A. No. OA 210/89 and TAK 325/87
 XXXXXX 109

DATE OF DECISION 27 .3.1991

K.P.Dasan and 5 others (Review) Applicant (s)

Mr.P.Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India represented _____ Respondent (s)
by the General Manager, S.Railway, Madras and 21 others

Mrs.Sumathi Dandapani _____ Advocate for the Respondent (s)

Mr.K.Rama Kumar

The Hon'ble Mr. S.P. MUKERJEE, VICE-CHAIRMAN

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?
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)

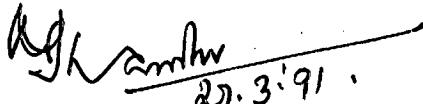
This R.A. dated 17th December, 1990 was filed by the review applicants on 19th December 1990 for the review of the order of this Tribunal dated 5.9.1989 in TAK 325/87 and OA 210/89. The review applicants are regular Gangmen and were working as Khalasis under the Inspector of Works, Ernakulam South. They were not a party in the aforesaid two applications. Those two applications had been filed by casual Khalasis against the order dated 20.9.83 by which the regular vacancies of Khalasis under the decasualisation scheme were proposed to be filled up by selection of regular Gangmen like the review applicants. The Tribunal allowed those two applications with the direction that the applicants therein should also be considered for absorption in the regular posts of Khalasis created under the decasualisation scheme and those posts should be filled up by suitable

casual workers based on the Divisional seniority list and regular Gangmen should be considered for appointment by transfer as Khalasis only after exhausting the list of all eligible casual labourers. The vacancies so released by the transfer of regular Gangmen were also directed to be made available to the ~~eligible~~ ^{eligible} casual workers who remain unabsorbed. In pursuance of that judgment the review applicants who had been transferred as Khalasis against the decasualisation posts have been ordered to be reverted back as Gangmen in their parent cadre. The review applicants have filed another O.A 1085/90 challenging the order of reversion dated 22.11.90, a copy of which is at Annexure RA2. The main contention of the review applicants is that our judgment dated 5.9.89 was passed without hearing the review applicants who have been affected adversely by the reliefs claimed in the two applications disposed of earlier. According to them, the aforesaid judgment in OA 210/89 and TAK 327/87 was obtained by collusion and fraud and that ^{unjust} ^{non} impleading the review applicants in these applicants is fatal. It has been stated that the review applicants as Gangmen have very few avenues of promotion and 10% of posts in Class IV cadre have been reserved for Gangmen by the Railway Board. Respondent Nos. 11 to 22 in the R.A. who were applicants in O.A 210/89 have challenged the review application as time-barred and stated that the relief claimed in that O.A. was ^{only} against the circular calling for volunteers from Gangmen for transfer as regular Khalasis against the decasualisation vacancies. They had no locus standi in that application.

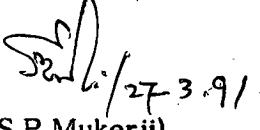
2. We have heard the arguments of the learned counsel for both the parties including the learned counsel for the Railways. In the two applications decided by the judgment dated 5.9.1989 the impugned order was a circular inviting volunteers from the cadre of regular Gangmen, the review applicants at that time had no locus standi. It may be recalled that the review applicants are regular Gangmen in the scale of Rs.775-1025 and they are keen to come over as Khalasi in the lower scale of Rs.750-940. Even otherwise by their being retained as regular Gangmen they are not adversely affected by the so-called deprivation of their transfer to the lower grade of Khalasi. In the above context, they cannot be held to be necessary party

.3.

in the aforesaid two applications. In spite of that, in the interest of justice, we condoned the delay in filing the review application on the ground that they have not been a party in the two applications mentioned above. We do not see any flaw in the judgment by their non-impleadment as the challenge in those two applications was against a proposal to draft regular Gangmen to fill ~~up~~ the posts of regular Khalasis created under the decasualisation scheme. The points raised in the review application go into the merits of the judgment which cannot be raised in a review application. No error apparent on the face of record or any new fact has been brought to our notice which would warrant a review of our order in the aforesaid two applications. In the circumstances we see no merit in the review application and dismiss the same.


(N.Dharmadan)
Judicial Member

27.3.91


(S.P.Mukerji)
Vice Chairman

n.j.j