

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

...

DATED 28.2.1990

PRESENT

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

&

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

O.A. 216/89

1.T. Purushothaman

2.V. K. Gopalakrishnan and

3.K. Krishnakumar

Applicants

Vs.

1. Union of India represented by.
General Manager, Southern
Railway, Madras

2. Chief Personnel Officer,
Southern Railway, Madras

3. Senior Divisional Personnel
Officer, Southern Railway,
Palghat and

4. Divisional Personnel Officer
Southern Railway, Palghat

Respondents

M/s. K. Ramakumar,
V. R. Ramachandran Nair and
Roy Abraham

Counsel for the
applicant

M/s. M. C. Cherian,
Saramma Cherian and
T. A. Rajan

Counsel for the
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicants are working as C.P.C. Mazdoors in Southern Railway, working under the Inspector of Works, Calicut, Palghat Division. They were all given the benefits of the Central Pay Commission scale at Rs. 196-232 from different days. All the applicants 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 150 permanent posts of Khalasis under IOWs ^{and they were to} created in the scale of Rs. 750-940 for de-casualisation of the casual labourers. According to the applicants, instead of filling the above posts by appointing de-casualised existing casual labourers, the respondents called for volunteers from regular Gangman in the higher grade of Rs. 775-1025. Annexure-B is the order calling for volunteers. The applicants submitted that they have got a superior claim for being considered for regularisation as Khalasis against the posts created under the de-casualisation. But without considering their claim posting orders have been issued transferring the applicants on empanelment to work as Gangmen against their wishes. ^{Hence the applicants have challenged An: B. by} They also pray for a direction to allow them to continue as Khalasis. ^{and by} ~~They also pray~~ for regularisation.

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(d) and R-1(e).

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 decasualisation 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. Dharmadan) 28.2.90.
Judicial Member


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

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

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R.A No.62/90 ⁱⁿ (O.A. No. 216/89
F.A. No.

1990

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

T.Purushothaman and 2 others Respondent (s)

M/s. K.Ramakumar , V.R Ramachandran Nair 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? *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 216/89, 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 Khalsis.
- (iii) The seniority referred to in clause (e) of the direction should be clarified as the seniority in the post of Khalasi on the basis of the date of absorption as Khalasi.

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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 clarification 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

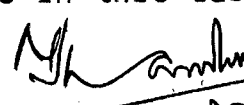
to an aptitude test'.

- (ii) In clause (d) after the word 'regularised' the words 'either as Gangmen or' be deleted.
- (iii) For the last sentence of 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