

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 227/91
~~XXXXXX~~

199

DATE OF DECISION 3-8-1992.

S.Ashokan & 7 others Applicant (s)

Mr.P.Santhosh Kumar Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the General Manager, S.Railway,
Madras & 13 others.

Mr. M.C.Churian (R.1 to 4) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. P.S.Habeeb Mohamed, Administrative Member

The Hon'ble Mr. N. Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? ^Y
2. To be referred to the Reporter or not? ^{NA}
3. Whether their Lordships wish to see the fair copy of the Judgement? ^{NA}
4. To be circulated to all Benches of the Tribunal? ^{NA}

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicants are claiming seniority and regular absorption as Electrical Khalasis in the scale of Rs.750-940 on the basis of their seniority above respondents 5 to 14. The applicants were initially appointed as Casual Labour Khalasi with effect from 24.1.1984 in the Electrical Wing of the Southern Railway, Palghat. After completing four months of continuous service they were granted temporary status. Respondents 5 to 14 were initially appointed in the Engineering Department of the Southern Railway. When they became surplus they were engaged in the Electrical Department with effect from 4.7.1984 on the specific understanding that they will be given bottom most seniority in the existing casual labour khalasis now working in the Electrical Wing. Annexure-I is the offer and

Annexure-II is the acceptance given by the 10th respondent. Similar undertakings were given by other respondents 5 to 9 and 11 to 14. The applicants further submit that the Engineering Department and Electrical Wing are two separate departments for seniority, promotion and other service benefits of the employees. Respondents 5 to 14 were treated as employees who joined in the Electrical Wing on 4.7.84 and after four months continuous service in that department they have been granted temporary status from 1.11.1984. Thus admittedly they are junior to applicants. Overlooking seniority of the applicants the 2nd respondent has issued Annexure-III office order dated 31.1.1991 for the screening of substitutes/casual labourers of the Electrical Department as Temporary Electrical Khalasis in the scale of Rs.750-940 for filling of the vacancies upto 31.12.1990. On the basis of Annexure-III respondents 5 to 14 were absorbed as Electrical Khalasis. It will give hardship and injustice to the applicants. Hence they have filed this application under Section 19 of the Administrative Tribunals Act, 1985.

2. Respondents 1 to 4 opposed the application by filing a reply. The contesting respondents 5 to 14 have neither appeared nor filed any reply in this case.

3. The case of the applicants is simple. According to them they were originally absorbed in the Electrical Department as casual employees and they were granted temporary status. Since respondents 5 to 14 came to this department at a later stage with the undertaking that they will be absorbed in the Electrical Department giving bottom-most seniority in the list of existing casual labour khalasis working in the department at the relevant time they are not entitled to any seniority over the applicants.

The respondents 1 to 4 relied on para 2512 of the Indian Railway Establishment Manual and contended that respondents 5 to 14 have been drafted to the Electrical Department for filling of the vacancies in July 1984, considering their total number of service both in the Engineering^{and Electrical} Departments and they are senior to the applicants. We have gone through para 2512 of the Indian Railway Establishment Manual. It deals with the absorption of casual labourers in the regular vacancies. A Casual labour who acquires temporary status shall be considered for regular employment without having to go through the Employment Exchange. This paragraph does not help the respondents in sustaining the contention that the respondents 5 to 14 should be given seniority over the applicants because of their earlier absorption in the Engineering department.

4. Respondents 1 to 4 further contended that Annexures R2 & R3 clarification letters from the CPD dealing with the seniority enable them to give benefit of seniority to respondents 5 to 14 above the applicants. In Annexure-R2 against question No.2 "How the seniority of CLs for purpose of empanelment should be computed in general" the clarification given is "The seniority should be fixed based on the total number of days worked in the Unit of empanelment." Question No.3 and the clarification thereof is also extracted below:

<u>"Question</u>	<u>Clarification</u>
3. How the seniority is to be computed in case of CLs transferred from one seniority unit of empanelment to another in the same department.	On completion of works or for nonavailability of work, a CL can be transferred from one Unit to another. On re-engagement in the same unit, there is no change in their seniority. But when they are re-engaged in another unit they rank junior most treating them as a fresh candidate."

5. The clarifications contained in Annexure R2 and R3 are in effect support the case of the applicants who assert that they were absorbed and granted temporary status in the Electrical Wing earlier to respondents 5 to 14. Respondents 5 to 14, who came to this department at a later stage and they rank as juniormost treating them as fresh candidates in the Electrical Wing are not entitled to be placed above the applicants.

6. The Railway has the authority to appoint the respondents 5 to 14 in the Electrical Wing without affecting the seniority of the applicants who joined in that department and obtained temporary status earlier to respondents 5 to 14. The applicants are also having as qualifications Diploma in electrical trade which the respondents are lacking. In regard to the qualification and the seniority the applicants are superior and eligible to be regularised in the Electrical Department before the regularisation of the respondents 5 to 14.

7. Annexures-IV and V produced by the applicants clearly establish that the respondents 5 to 14 were granted temporary status only on 1.11.1984 while the applicants have been given temporary status on 23.5.1984 in the Electrical Wing. The applicants continued in that department from the very inception of their service and their ^{seniority} cannot be altered by issuing Annexure-III for screening and absorption of respondents 5 to 14 as indicated therein.

8. The respondents 5 to 14 cannot ignore Annexures-I and II, the offer and acceptance made by them at the time when they have been transferred to the Electrical Department when they became surplus in the Engineering Department. They have given undertaking that they will claim only junior most position in the seniority in the new department. The contention of the respondents 1 to 4 that respondents 5 to 14 have worked more days when the dates of their work from both the departments are taken cannot be accepted in the light

of the clarifications contained in Annexure-R2 and R3.

9. The learned counsel for the applicants placing reliance on the judgment in OAK 159/88 contended that Electrical Department is a separate department and this has been held by the Tribunal in that case. It is not necessary for us to examine the judgment in OAK 159/88 in deciding the issue arising in this case. The clarification Annexures R2 and R3 produced by the respondents clearly indicate that the seniority of an employee should be fixed based on the total number of days worked by him in the unit of employment. If this clarification is taken as the basis of fixing the seniority of the applicants vis-a-vis respondents 5 to 14 the applicants' case deserves consideration and the applicants have produced material to show that they have more number of days of service in unitwise and they have been granted temporary status before the same was granted to respondents 5 to 14. Educationally also the applicants are better qualified.

10. Under these circumstances, considering the contentions raised by the applicants, we are satisfied that the application is to be allowed. We direct the respondents 1 to 4 to appoint the applicants as regular khalasis in the scale of Rs.750-940 taking into consideration their service in that department and conferment of temporary status to them. The applicants screening and absorption as Electrical Khalasis in the Electrical Department shall be made on that basis in preference to respondents 5 to 14 while implementing the decision in Annexure-3.

11. The application is allowed accordingly. There will be no order as to costs.


(N.DHARMADAM)
JUDICIAL MEMBER


(P.S.HABEEB MOHAMED)
ADMINISTRATIVE MEMBER