

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Applicaton No.240/2013

Monday.... this the 18th day of January 2016

C O R A M :

**HON'BLE Mr.JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER**

1. George K.S., S/o.Samuel,
Helper (Loco),
Office of the Senior Section Engineer/
(Carriage and Wagon), Southern Railway,
Ernakulam Marshalling Yard (Goods).
Residing at Kunnumpurath, Pattanakkad P.O.,
Alappuzha District – 688 531.
2. M.J.Johnson, S/o.John,
Helper (Loco),
Office of the Senior Section Engineer
(Carriage and Wagon), Southern Railway,
Ernakulam Marshalling Yard (Goods).
Residing at Mundakkattu, Thirumala Bhagom P.O.,
Via. Thuravoor, Cherthala, Alappuzha District – 688 532.
3. M.G.Vijayagopalan, S/o.Gopalan,
Helper (Loco),
Office of the Chief Crew Controller/
Ernakulam Junction, Southern Railway.
Residing at Sreesailam, Chottanikkara P.O.,
Ernakulam District – 682 312.
4. George Issac, S/o.M.H.Issac,
Technician Grade III (Loco),
Southern Railway, Ernakulam Marshalling Yard.
Residing at Railway Quarter No.50-K,
Ernakulam Goods, Tatapuram P.O.,
Kochi – 682 018.Applicants

(By Advocate Mr.T.C.Govindaswamy)

V e r s u s



1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
3. The Chief Mechanical Engineer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
4. The Financial Adviser and Chief Accounts Officer,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 600 003.
5. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum – 695 014. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 16th December 2015 this Tribunal on 18th January 2016 delivered the following :

ORDER

HON'BLE Mrs.P.GOPINATH, ADMINISTRATIVE MEMBER

The applicants 1, 2 and 3 designated as Helper (Loco) and the 4th applicant designated as Technician III (Loco) are aggrieved by the total apathy on the part of the respondents in absorbing the applicants in the Carriage & Wagon Wing of the Mechanical Department of Southern Railway, Trivandrum Division, despite their continuous and unbroken utilization in that Wing from the year 1993 onwards. The applicants submit that they were transferred from the post of Trackman from the Civil Engineering Department to the Carriage & Wagon Wing of the Mechanical Department. Though they were designated as Loco Khalasis, no such cadre



was and is in existence. The applicants were being utilized in the Carriage & Wagon Wing of the Mechanical Department but nevertheless they are not shown to have been absorbed in the cadre. The applicants submit that they must be deemed to have been transferred to, and absorbed as Mechanical Khalasis in the Carriage & Wagon Wing of the Mechanical Department from the date of their initial entry in that Wing. The applicants submit that several persons were transferred to the Mechanical Department, Carriage & Wagon Wing, under the 10% intake provided under the Rules (with 50% seniority). Several persons were also transferred from the category of Trackman, on request, on loss of seniority. The applicants are the only group of persons who stand deprived of their legitimate benefits and treated as orphans for the last 20 years.

2. Respondents in their reply statement submit that Annexure A-1 is not forming the whole text as regards the absorption of the applicants as Khalasis in the Loco Wing of the Mechanical Department in Trivandrum Division. It is a reply in disposal of the representation dated 15.1.2013 requesting for deemed absorption as C&W Khalasis from the post of Loco Khalasis, in which post they have been working for the last 19 years ie., from the year 1993 having been selected for the said post as per Annexure A-2. Accordingly, the applicants cannot be stated to be aggrieved about their absorption as Loco Khalasis just because Annexure A-1 has been impugned by them in the O.A. It is pointed out that the applicants have not

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even challenged Annexure A-2 absorption. It is submitted that when the very absorption remains unchallenged but acted upon so far, the prayer for deemed absorption in a post other than what is mentioned in Annexure A-2, that too from the date of entry in Mechanical Department, is not maintainable as hit by estoppel, acquiescence etc. Annexure A-2 has been accepted by the applicants all through these 19 years. In the present O.A also, the applicants have identified themselves as Helpers in Loco Wing of the Mechanical Department. They have not produced any document which may prove that they have been posted as Carriage & Wagon Khalasis in the C & W Wing of the Mechanical Department. The fact being thus, the applicants have not proved their locus standi in claiming absorption in another post. It is submitted that all these 19 years the applicants' names have been maintained in the Loco Wing of the Mechanical Department as Loco Khalasis. The seniority list of Mechanical Khalasis had been published by the Railways on many occasions during this period. One of such lists recently published is produced and marked as Annexure R-1. The applicants do not have a case that they have represented against showing their names as Loco Khalasis in this seniority list or any other such lists. Likewise the applicants' names have not been shown in the seniority list of C&W Khalasis at any time pertaining to this period and the applicants have not represented against non showing their names in the said lists. The applicants have not impleaded any employee from the cadre of C&W Khalasis above whom they are trying to steal a march in seniority as per this

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O.A. The seniority of the applicants has already been settled as stated above for the past 19 years counted from Annexure A-2 and the same cannot be raised as per the proceedings in this O.A. There are many judgments from various juridical levels including from the Apex Court against revision of seniority. This Tribunal also has rejected a similar claim as per order dated 22.5.2013 in O.A.No.624/2012 quoting the Apex Court order in **H.S.Vankani Vs. State of Gujarat (2010) 4 SCC 301**. It is submitted that the applicants 1 to 3 are working as Helpers (Loco) and the 4th applicant is working as a Technician Grade III (Loco) in the Loco Wing of the Mechanical Department of Trivandrum Division in Southern Railway. It is pointed out that the applicants themselves say that all of them are working only in Loco Wing. The respondents railways highlight that the absorption of all the applicants in Loco Wing of the Mechanical Department was finalized a decade ago, on the applicants' willingness, as per Annexure A-2 and the 4th applicant has thereafter got promoted also in the absorbed Wing. Annexure A-1 is only a reply to their representation on facts of the case.

3. Heard the counsel for the parties and considered the written submissions made.

4. During 1993 the applicants while working in the Civil Engineering Department of Trivandrum Division, on their willingness, by a process of screening by a Committee of Officers constituted for the purpose, were

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absorbed as Loco Khalasis in the Loco Wing of the Mechanical Department in Trivandrum Division. Hence the applicant's contention that they were given to believe, without submitting any evidence supporting the contention, that they were being absorbed in Carriage and Wagon Wing of the Mechanical Division is without any basis. Applicants have conveniently omitted to produce the endorsement of Annexure A-2 document, which would indicate to whom the document was endorsed.

5. The applicants' names are appearing at Sl.No.3,7,10 and 14 of Annexure R-1(3) seniority list of Steam Loco Staff of Mechanical Department. Even in 2011 the applicants appeared in the seniority list supra and not in the Carriage and Wagon Wing. Hence the plea of 'deemed absorption' as prayed for by the applicants is not tenable as their absorption was by Annexure A-2 in 1993. Up to Annexure R-1 dated 1.2.2011 ie. for eighteen years, they appeared in the Steam Loco Staff seniority list only. Despite the fact that the Steam Loco has been discontinued from operation, the respondents apparently has maintained and not dispensed with the services of the applicants. Applicants have produced no written commitment in support of their prayer. However, they do produce Annexure A-2 showing their screening and selection as Loco Khalasis in 1998. Applicants in the O.A state that they were designated as Loco Khalasis, whereas they were appointed as Loco Khalasis on the basis of a selection. The applicants also did not produce the Recruitment Rules of Mechanical

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Khalasis (to which they are seeking absorption) to ascertain whether they have the qualification to the post to which they are seeking 'deemed absorption'. Applicants themselves, in Ground C, admit that several persons were transferred to the Mechanical Department and Carriage and Wagon Wing under the 10% intake provided under the Rules. Several others were also transferred on request and on loss of seniority basis. But the applicants conveniently failed to mention whether such an option was exercised and denied to them or whether they failed to exercise such an option for a move to Carriage and Wagon on bottom seniority. A reading of Annexure A-8 reveals that all skilled and unskilled staff of the Steam side should exercise an option to go to any of the following categories against direct recruitment vacancies :

- a. SSDC as per rules framed.
- b. NTPC provided they have the minimum educational qualification.
- c. Artisans vacancies against 25% or DR quota in any departments such as Mechanical, Electrical, C&W, S&T etc.

The staff so opted will be trained and will be subjected to a trade test at the end of training. Those who do not clear the test will be given one extension. If they fail again they will be filled against vacancies as per Administration's decision. The above order with its conditions are the standard Department of Personnel instructions on absorption of surplus staff on redeployment. On such redeployment the staff will be absorbed on bottom seniority.

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Applicants though produced Annexure A-8 order do not indicate anywhere that they had applied to opt for any of the options indicated above so as to sustain their claim for C&W Khalasis, from their position as Loco Khalasis. The applicants did not exercise the option under 10% intake from Engineering Department provision with 50% seniority induction in C&W. Applicants did not apply for the same with others who were absorbed on application as C&W Khalasis. Applicants have also accepted 1st and 2nd financial upgradations as Loco Khalasis and did not challenge the same. The applicants did not exercise the option at the appropriate time when the option was offered vide Annexure A-8 in 1989 and as per the schemes thereafter. Applicants were selected as Loco Khalasis in 1993. They approached the Tribunal in 2013 challenging the selection of 1993 and hence it is hit by law of limitation. They seek after years together a relief to unsettle the settled seniority position of Khalasis of C&W Wing. That is not legally permissible. Hence, we find no merit in the contentions raised by the applicants in this O.A. Accordingly the O.A is dismissed. No costs.

(Dated this 18th day of January 2016)



P.GOPINATH
ADMINISTRATIVE MEMBER



N.K.BALAKRISHNAN
JUDICIAL MEMBER

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