

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 28-5-92

O.A. 249/91

N. Doraisamy and
six others

Applicants

Union of India through
the General Manager,
Southern Railway,
Madras-3 and others

Respondents

O.A. 583/91

Kutty Asan P.C. and two
others

Applicants

Union of India through the
General Manager, Southern Railway
Madras-3 and others

Respondents

Mr. P. Sivan Pillai

Counsel for the
applicants in both cases

Smt. Sumathi Dandapany

Counsel for R 1-3 in
O.A. 249/91 &
R 1-2 in O.A. 583/91

Mr. P.K. Madhusoodhanan

Counsel for R-4, 5, 8,
10 to 18 in O.A. 249/91

PRESENT

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

HON'BLE MR. N. DHARMADAN, JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

These two applications were heard together by consent of parties and we are of the view that these applications can be disposed of by a common judgment because the facts and the issue arising for consideration are identical. For convenience, we deal with the facts in O.A. 249/91.

2. The applicants are Electrical Khalasis/Khalasi helpers working in the Electrical Department of the Trivandrum Division of the Southern Railway. Except the fifth applicant,

who has passed ITI, all the others are SSLC failed/in candidates

regard to the educational qualification. Applicants 1 & 5

are working in the Department from 1982 and others from later dates.

3. The applicants are attacking the proposal of the

2. Railway to fill up the vacancies of AC Khalasis in the

Electrical Wing with qualified candidates from other units

fixing SSLC with three years experience as minimum qualifi-

cation. as per Anns. A5 & A6.

4. According to the applicants, Electrical Department

of the Railway consists of three wings namely, Train lighting,

Power and A.C. The method of filling up of the vacancies

of group-D posts in these Wings was by ^{by} Electrical Deptt. calling volunteers from/

and considering suitability of employees from among them.

This practice was in force from the very inception and

Annexure A-2 is produced to support this practice followed

by the Railway.

5. They have also produced Annexure A-3 notification

dated 28.11.90 inviting application from serving regular

employees of Traffic Department for posting as Artisan

Khalasis in the scale of Rs. 750-940. This is produced to

prove the case of the applicants. They have produced

Annexure A-4 "avenue chart" of AC cadre to substantiate

their cases that the vacancies of Khalasis in the A.C. cadre

can only be filled up with persons working in the Electrical

Wing and to establish that the prospect of career advancement

in the A.C. cadre is faster than in other Wings. When

38 vacancies of A.C. khalasis were notified as per Annexure A-2

the respondents did not take further steps to fill up the vacancies following the earlier procedures, but issued a further notification Annexure A-5 calling volunteers from Khalasis working in other Departments, contrary to the instructions and Annexure A-4 'avenue chart.' The Railway had fixed a minimum educational qualification of SSLC plus aptitude to work in ~~xxx~~ A.C. Wing. A further notification Annexure A-6 was also issued fixing three years service in the A.C. section, at ~~x~~ one time or ~~other~~ ~~xxxx~~ as the requisite criteria for selection. According to the applicants, the proposal to bring in employees from outside the Electrical Wing fixing the minimum qualification of SSLC with three years experience ~~xx~~ deprive the chance of the applicants who are already working in the Electrical Wing to get a posting in the existing vacancies of A.C. Wing. Accordingly, they have submitted Annexure A-7 series of representations, but the respondents have not disposed of the same. The applicants contended that the Indian Railway Establishment Manual fixes the minimum qualification prescribed for group-D post. The relevant portion of the Manual as quoted in the application reads as follows:

"iv. Academic qualifications, Literacy as a qualifying condition:

- (a) Should be insisted upon only for those categories for which it is essential for the proper execution of duties. Literacy should be taken to mean ability to read and write simple sentence in any language. It is not necessary to relate it to passing a prescribed examination or standard. The minimum standard need not be the same for all class IV services. It would have to be higher for a Fireman and later as a Driver than say ~~o~~ for a Khalasi.

under examination of the Railway from 1985 considering the changed^{Enquiry} circumstances. The Railway Accident /- Committee recommended that in the lowest recruitment grades in group-D category, a minimum educational qualification will be fixed. In its recommendation No. 10 (in para 10 of their Report) the Committee recommended that xxx basic literacy may be prescribed in the recruitment standard for all staff irrespective of the category, including casual workers. Annexure R-1 is a copy of the Railway Board's order dated 16.8.85 passed in this behalf. The relevant portion dealing with consideration of the matter is extracted below:

"In the context of increasing sophistication in Railway Technology and modernisation of its operations, the question of prescribing minimum educational qualifications for group-D(class-IV) recruitment on the Railways has been under consideration of this Ministry for some time past. The Railway Accident Enquiry Committee, 1978 had recommended that in the lowest recruitment grades in group-D(class-IV) category, including casual labour only persons with minimum educational qualifications should be recruited. Railway Reforms Committee in their Recommendation No. 10 (in part IX of their report in personnel) have recommended that basic literacy should be prescribed in the recruitment standard for all staff irrespective of category including casual labour.

3. The matter has been carefully considered by this Ministry inter alia, in the light of the above mentioned recommendations. It has now been decided that for recruitment/appointment to group-D posts, the minimum educational qualification should be as under:

- 1) In future casual labour and substitutes will be eligible for absorption in vacancies (other than those of Safaiwalas) in all the wings of the Electrical and Mechanical Departments and in the Workshops of S & T Department only if they have the minimum qualification of ITI or they are course completed Act Apprentices.
- ii) For recruitment of Khalasis in the Diesel/ Electric Loco/EMU Shed etc, the instructions contained in this Ministry's letter Nos. E (NG) II/80/RCI/75 dated 31.5.85 will continue to apply.
- iii) (a) For recruitment to vacancies (other than those of Safaiwalas) in all other wings

(including workshops) of the Electrical/Mechanical Departments and in workshops of S & T Department, the minimum educational qualifications will be ITI on completion of a course under the Apprentices Act.

(b) The minimum qualifications for posts of Khalasis in S & T Department (i.e. for other than S & T workshops) will be a pass in the tenth standard."

7. Further orders Annexure R-2 to R-4 were issued stating that the qualification for the Khalasis to be taken to the A.C. Wing shall be pass in SSLC as the minimum qualification considering the fact that they have to deal with a number of disciplines in addition to refrigeration. are ² Annexure R-2 to R-5/orders issued in this behalf. The latest letter issued by the Railway is Annexure R-6. This letter fixes priority of absorption from Khalasis in the following manner:

"Taking all the factors into consideration, it has since been decided that the priorities of absorption of Khalasis in AC wing shall be as under:

- i) Regular Khalasis working in TL and power side, who have got the requisite SSLC qualification and have volunteered to come to AC section
- ii) Regular Khalasis in TL and Power side with 8th Std. passed and above but not SSLC and who volunteered to come to AC section and had put in 3 years of service in the AC section at one time or the other, as a one time exemption.
- iii) CPC Khalasis being empanelled with SSLC qualification volunteering to work in AC Section.
- iv) CPC Khalasis who are being empanelled and who have passed 8th Std. and above but not SSLC and who have put in more than 3 years of service in AC section as a one time exemption.

Note: The 3 years of service mentioned above includes service as temporary status Khalasis in the AC side.

2. As and when vacancies become available in the A.C. Section, they are to be filled up according to the above priority. It should be ensured that there will not be any excess operation of cadre in the AC Section. The CPC Khalasis who are now working in the AC wing should, in the reverse order of seniority, be transferred to the Train Lighting or power side or General services wherefrom the volunteers have been absorbed. This principle should be followed strictly."

8. The fixation of qualification for a post is exclusively within the powers of the administrative authorities who are better informed about the working and necessity of each department. When they have fixed the qualification taking into consideration the relevant aspects, the courts/tribunals could not interfere in such fixation unless it is shown that the fixation itself is malafide and arbitrary with ulterior motive.

9. In the instant case, the apprehension of the applicants is that by inducting persons from outside the Electrical Department with additional qualification, their chance will be reduced. But taking into consideration the change in the circumstances and the decision taken by the appropriate authorities ^{by} the criteria for selection ~~It~~ cannot set aside/merely on the ground that the chance of promotion to the employees ~~is~~ ^{is} reduced or affected adversely. So the contention of the applicants based on their apprehension cannot be appreciated and given much weight.

10. Further arguments advanced by the applicants is based on the minimum qualification fixed by the Railway Establishment Manual for group-D employees and Annexure A-8 series., The Manual which came into existence in 1968

contemplates literacy and standard of employees in the lower category having regard to the circumstances and position prevailing at that time. The subsequent changes and sophistication in each department will have to be separately dealt with and the power of the Railway Board to take appropriate decision having regard to the changed ~~of~~ ⁱⁿ circumstances/~~each~~ Department, cannot be ignored simply relying on the provisions of the Railway Manual pressed in to service by the learned counsel for the applicant.

11. The respondents 1 to 3 in their reply statement do not specifically deal with Annexure A-8 series, but they relied on ext. R-1 to R-3 and contended that the staff in the AC unit have to deal with a number of discipline in addition to refrigeration and hence the minimum educational qualification of SSLC/Matriculation should be insisted ^{upon} for absorption and posting of Khalasis in A.C. Wing of the Electrical Branch. In the reply statement filed by respondents 4,5,8,10 to 18 they have stated that the Annexure A-8 series applicable only for casual service and literacy is not insisted upon in their case.

12. The first letter Annexure A-8 (A-8(i)) is dated 4.9.86. It discloses the decision of the Railway Board dealing with the question of minimum educational qualification for group-D (class IV posts) ^{and the} stay~~ed~~ in regard to the decision referred to in Ext. R-¹~~2~~ dated 16.8.85, by which the qualification for the Khalasis to be taken in the A.C. Wing has been fixed as pass in SSLC. The further letter

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Annexure A-8 series (A-8(2) dated 19.11.86 contained the order modifying the stay referred to in Annexure A-8(1)

Para 2 of the said letter reads as follows:

"In this connection attention is invited to para 3(ii) of Board's letter dated 16.8.85 cited above in which it was enjoined that for recruitment of Khalasis in the Diesel/Electric Loco/EMU sheds, the instructions contained in Board's letters of 28.1.83, 31.12.83 and 31.5.85 will continue to apply. It is hereby clarified that the instructions contained in the Board's letter No.E(NG)II/80/RC1/7 dated 28.1.83 E(NG) II/83/RC2/39 dated 32.12.83 and E(NG)II/83/RC-2/75 dated 31.5.85 will continue to be applicable, notwithstanding issue of Board's letter of 4.9.86 quoted above."

Annexure A-8 series (A-8(3) letter dated 14.4.88 emphasis that Ext. R-2 was kept in abeyance temporarily pending review of the qualification specified therein. The Railway Board's letter dated 20.1.83, 31.12.83 and 31.5.85 will continue to apply after Annexure A-8 series (A-8(2) dated 19.11.86. Ext. R-1 letter refers to Board's letters dated 31.12.83, 18.6.83, 21.8.83 and 31.5.85 fixing the minimum qualification for the post of Khalasis for their absorption in the Diesel/Electrical/Loco/EMU shed. A combined reading of Ext. R-1, R-2 and R-3 with Annexure A-8 series it can be seen that the fixation of minimum educational qualification for posting of persons as Khalasis in the A.C. Wing of the Electrical Branch will prevail and can be insisted upon as contended by the respondents.

13. The statement of the applicants that the practice of filling up posts of A.C. Khalasis without insisting upon

the educational qualification was followed by the Railway has been specifically denied by the respondents in their reply statement. The minimum educational qualification was fixed as one of the conditions for recruitment for the post of A.C. Khalasis from the year 1985. This is clear from Annexure A-2 notification and the statement of Respondents 4, 5, 8, 10 to 18 in their reply statement.

The relevant portion is extracted below:

" Volunteers were called in 1984, 1986 etc. and selection was conducted. Casual Labourers/ substitutes from all departments who are having the required qualifications were allowed to take part in the aptitude test and interview and those found selected were appointed.

14. The same educational qualifications were prescribed in the selection conducted in the year 1987-88 and subsequent years. The second respondent has selected and posted as A.C. Khalasis, a number of persons having the minimum educational qualification of SSLC. The applicants who were working in the Electrical Wing did not raise any objection against the fixation of educational qualification from 1985 onwards and calling volunteers and conducting aptitude test for absorption of Khalasis in the A.C. Unit. Therefore, they are estopped from raising objections against fixation of qualification of SSLC in the Annexure A-5 notification.

15. Respondents 5, 8, 11, 13 and 18 were working in the Electrical Department from their initial engagement. They have passed SSLC except R-11. They have applied for the post of A.C. Khalasi in response to Annexure A-6

circular and were selected and posted as A.C. Khalasis in the A.C. Wing. The other respondents were also selected and posted as A.C. Khalasis.

16. The respondents have stated in the reply statement that Annexures A-5 and A-6 have been issued under the guidelines governing the recruitment to the post of A.C. Khalasis and the request of the staff through their recognised trade unions and the said procedure has been issued only as one time measure for filling up the vacancies arising upto 1.3.91. Out of the applicants, the fifth applicant who is an I.T.I. holder has been screened and empanelled and it is only after exhausting all the educationally qualified hands in the Electrical Department that the Railway decided to bring in persons from other departments having minimum qualification.

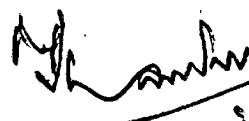
✓ | The Tribunal has upheld the absorption of volunteers from other wings in the A.C. Wing in O.A. 7, 8 and 111/91.

17. Having regard to the change in the circumstances and the facts of this case, it cannot be said that the action of the respondents in bringing experienced persons with additional qualification from other departments to the A.C. Wing is illegal as alleged by the applicants. It being one time measure, adopted in the exigency of service, there cannot be any grievance for the applicants, particularly when the recognised trade unions requested to adopt this policy and the Railway had accepted the request.

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18. In the light of the foregoing discussions, the application is only to be dismissed. Accordingly, I do so.

19. There will be no order as to costs.


(N. Dharmadan)
Member (Judicial)
20. 5.92

N.V.Krishnan, Administrative Member

I have carefully gone through the judgment of my learned brother and I regret my inability to agree with the conclusions reached by him.

2. The facts of the case have been set out in his judgment and therefore, it is not necessary to repeat them. However, it should be stated at the outset itself that this is a case where the applicants have participated in an examination and, not having been selected, have impugned the selection on the ground that the educational qualification prescribed for the selection is in violation of the standing orders of the Railway Board. The respondents 1 to 3--Railways, for short--have contended that the application is not maintainable on this short ground. Therefore, two questions have to be answered, viz. whether the allegation made in this regard is correct and secondly, even if it is correct, whether the applicants can impugn the selections on that basis, having participated in the examination.

3. In so far as the allegation made in the application about the educational qualification is concerned, I am of the view that the applicants have convincingly proved their case. Admittedly, the posts for which the selection is held (AC Khalasis in the Electric Branch) are Group D posts. Para 5 of the application states the grounds for relief and sub para (b) thereof reads as follows:

"(b). In terms of para (iv) of sub section IV of section B of Chapter 1 of the Indian Railway Establishment Manual the minimum qualification required for Group D posts is literacy only. The said rule reads as follows:-

IV. Academic qualifications, Literacy as a qualifying condition:-

(a) should be insisted upon only for those categories for which it is essential for the proper execution of duties. Literacy should

be taken to mean ability to read and write simple sentence in any language. It is not necessary to relate it to passing a prescribed examination or standard. The minimum standard need not be the same for all class Iv services. It would have to be higher for a Fireman and later as a Driver than say for a Khalasi.

- (b) For all other categories literacy should not be insisted upon, but as amongst candidates considered suitable for appointment, preference should be given to literate candidates. The standard of literacy required should be taken to mean ability to read and write simple sentences. No standard of literacy will be insisted upon for casual labour.

The Railway Board in terms of their letter No.E(NG)11/84/RRI dated 16.8.85 revised the minimum educational qualification of Group D posts. However, the decision was kept in abeyance by letter No. E(NG)/84/RRI/a26 dated 4.9.86 (RBE 159/86) and followed in letter No. E(NG)11/84/RRI/26 dated 19.11.86 (RBE 222/86) and by letter No.E(NG)/11/88/CL/34 dated 14.4.88. True copies of the letters dated 4.9.86, 19.11.86 and 14.4.88 are Annexure A8 series. The ; qualification requirement for Group D posts will remain as in para (iv) of sub section IV of the Manual. The applicants are literates. They are, therefore fully qualified for absorption as AC Khalasis according to their existing condition of service. Respondents cannot insist upon a higher qualification and for that reason resort to induction from outside the department ignoring the eligibility and right of the applicants. Annexure A5 is without jurisdiction, illegal and not based on relevant consideration."

4. Admittedly, the Railway Board issued a circular : dated 16.8.85 prescribing higher qualification for various posts. That circular has been exhibited by the Railways as Ann.R1. The circular admits that "excepting in a few cases like recruitment of Khalasis in Diesel/ Electric locosheds, formal educational qualifications for individual categories have not been laid down by this Ministry for recruitment to Group D (Class IV) post".
^{no case}
 The Railways have ~~stated~~ that for AC Khalasis, higher qualification of Matric stands prescribed even before Ann.R1 was issued.

5. Though such higher qualifications are prescribed for various posts, it is admitted, that by the Ann.A8 series of orders, the operation of the order dated 16.8.85 (ann.R1) has been kept in abeyance. The applicants have produced in the Ann.A8 series the last letter dated

14.4.88 which refers to keeping in abeyance the Ann.R1 directions prescribing higher qualifications. The Railways have not answered why, despite the letter dated 14.4.88 in the Ann.A8 series, higher qualifications have been prescribed in the impugned orders.

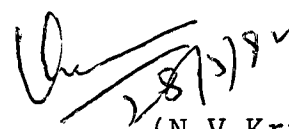
6. The Railways have exhibited Ann.R2 which is a letter dated 16.8.85 from the Headquarters office of the Southern Railway, Madras, which states that the qualification for Khalasis to be taken in the AC side is SSLC pass and therefore, this is the prescribed qualification for the post. There are two objections to this contention. Firstly, when the Railway Board itself has kept in abeyance its circular (Ann.R1) prescribing higher qualifications, as established above, the Headquarters, Southern Railway, Madras, had ^{no} ~~not~~ business to modify that order. They could have obtained a proper order from the Railway Board removing the ban in respect of AC Khalasis in the Electrical Department. As it is, the first respondent has acted more loyal than the King himself. The second objection is that the prescription in Ann.R2 is not in conformity with the prescription of higher qualification in Ann.R1. The only post for which Ann.R1 prescribes SSLC ~~for~~ Matric pass as the minimum qualification is "posts of Khalasis in S&T Department (i.e. for other than S&T workshops)".

7. I now consider the second question. The dictum that having once participated in an examination, one cannot question it later is not applicable universally. Here is a case where the prescription of higher qualifications in Ann.A6 is unauthorised and without authority. That is a question of law. The applicants can question that prescription despite their participation. The bar to challenge would have applied if Ann.A6 suffered from a procedural irregularity which is not serious. Educational qualification has a basic importance and hence the bar does not apply.

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8. In so far as the other grievance of the applicants is concerned, viz. the casual labourers in the Train Lighting and Power Wings of the Electrical Department alone should first be considered for appointment as regular Khalasis and not others, I am unable to agree. The Ann^{A6} memorandum issued by the Headquarters Office of the Personnel Branch of the Southern Railway indicates the priorities in regard to absorption to AC Khalasi post. The first priority is given to Khalasis in the Electrical Department, like the applicants. Therefore, it is the duty of the Railways to first consider the claims of all eligible Khalasis in the Train Lighting and Power side for absorption as AC Khalasis. If, however, ^e ~~there~~ ^{suitable persons} are not available in sufficient numbers, I am of the view that the Railways are fully empowered to open the selection to similar persons in other Departments also. The learned counsel for the applicant has not drawn our attention to any rule or instruction which prohibits this.

9. In the circumstances, in my view, this application has to be allowed and the Ann.A5 and A6 notices and the Ann.A9 results of the selection have to be set aside and the Railways are to be directed to conduct a fresh selection for AC Khalasi posts, specifying the qualification mentioned in the Manual, referred to in the extract of the application reproduced in para 3 supra and to consider first the claims of the Khalasis in the Train Lighting and Power Wings of the Electrical Department, like the applicants and only if suitable persons are not available can they open the selection to similar persons in other Departments.


(N.V. Krishnan)
Administrative Member

ORDER OF THE BENCH

In view of the difference of opinion between us we refer the following question for decision to the Hon'ble Chairman under the provisions of Section 26 of the Administrative Tribunals Act 1985. The Registry may place the files before the Hon'ble Chairman for appropriate orders:

"Having regard to the facts and circumstances of this case whether the selection made by the Railway for the post of (Electrical Khalasi/Khalasi Helpers) fixing the minimum educational qualifications and experience is with due authority and whether the operation of the order Ann. R1 dated 16.8.85 has been stayed by virtue of Ann. A8 series."

A.C. Khalasi

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(N.Dharmadan)
Member (Judicial)

28.8.92

(N.V. Krishnan)
Member (Administrative)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. O.A.249/91 & O.A.583/91
~~F. A. No.~~ 199

DATE OF DECISION 23.10.92

N.Doraisamy and six others _____ Applicant (s) in O.A.249/91
Kutty Asan P.C. and two others _____ Applicants in O.A.583/91

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

Versus,

Union of Indi through the General
Manager, Southern Railway, _____ Respondent (s)
Madras-3 and others.

Smt.Sumathi Dandapani _____ Advocate for the Respondent (s)
Mr.P.K.Madhusoodhanan

CORAM Mr.K.Ramakumar

The Hon'ble Mr.S.P.MUKERJI, VICE CHAIRMAN

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
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

ORDER

A difference of opinion having arisen between the Hon'ble Members of the Division Bench in O.A.249/91 and O.A.583/91, the difference of opinion has been directed by the Hon'ble Chairman under Section 26 of the Administrative Tribunals Act, 1985 to be resolved by me. The point on which the difference of opinion has arisen has been enunciated in the referral order of the Division Bench dated 28.5.92 as follows:-

"Having regard to the facts and circumstances of this case whether the selection made by the Railway for the post of Electrical Khalasi/Khalasi Helpers fixing the minimum educational qualifications and experience is with due authority and whether the operation of the order Ann.R1 dated 16.8.85 has been stayed by virtue of Ann.A8 series."

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2. The facts of the case which are not in dispute are as follows. The applicants in both these applications are working as Electrical Khalasi/Khalasi Helpers ~~working~~ in the Electrical Department of the Trivandrum Division of the Southern Railway. Most of the applicants are SSLC failed. They are aggrieved by the manner in which the respondents have proposed to fill up the vacancies of AC Khalasis in the Electrical wing. All these posts that is those held by the applicants as also the post of AC Khalasis are Group-D posts. The applicants' contention is that in the three wings of the Electrical Department, namely, Train Lighting, Power and A.C., the Group-D posts used to be filled up by calling volunteers from within Electrical Department and considering their suitability for these posts. They are aggrieved by the notification dated 10.8.90 at Annexure A5 by which the respondents for filling up the posts of AC Khalasis in the scale of Rs.750-940 invited applications from regular Khalasis in the scale of Rs.750-940 not only from Electrical Department but from all departments and over and above ^{laid} ~~laying~~ down that the volunteers should have the minimum educational qualification of SSLC pass. This notice was supplemented by another circular dated 12.1.1991 at Annexure A6 stating that the regular Khalasis working in Train lighting and power side even though not SSLC but with 8th standard pass will also be considered for the post of AC Khalasis if they had put in three years of service in the AC section. The applicants' contention is that in accordance with the Indian Railway Establishment Manual, for Group-D posts only literacy without any academic qualification has been prescribed and the higher minimum educational qualification which the Railways had prescribed vide their letter dated 16.8.85 had been kept in abeyance by their further letters dated 4.9.86, 19.11.86 and 14.4.88(Annexure A8 series). Thus, according to them, laying down of minimum educational qualification of SSLC or 8th standard for filling up the vacancies of

AC Khalasis is illegal and arbitrary and have prayed that by quashing the impugned orders at Annexures A5 and A6, the respondents be directed to consider them also for the post of AC Khalasis without insisting on higher educational qualification of SSLC or experience in the AC section. The Railways have justified laying down of SSLC pass for appointment of Khalasis in the AC wing by the job requirements of the post where the Khalasis have to deal with ^a number of disciplines in addition to refrigeration. By the order dated 21.3.90 (Ext.P6), the Railways have laid down priority of absorption of Khalasis in the AC wing indicating that only those regular Khalasis who possess SSLC qualifications and ^{are} empanelled CPC Khalasis with SSLC qualification and such empanelled Khalasis with 8th standard but with 3 years experience in AC section, shall be considered for posting as AC Khalasis. The learned Judicial Member has held that fixing of qualification for a post lies exclusively within the powers of the administrative authorities who are better informed about the job requirements of various posts and the Courts and Tribunals cannot interfere in such a matter. The degree of sophistication required in the various departments of the Railways cannot be ignored for the purpose of laying down the qualification. He held ^{that} a combined reading of Exbts.R1, R2 and R3 with Annexures-8 series shows that fixation of minimum educational qualification for posting of persons as Khalasis in the AC wing will prevail. He found that the same educational qualifications as in the impugned orders ^{had} been prescribed for the selection conducted in the year 1987-88 and subsequent years and the applicants who are then working in the Electrical wing did not raise any objection for fixation of educational qualification from 1985 onwards. The contesting respondents have referred to the decision of the Tribunal in O.As. 7,8, and 111 of 1991 in which absorption of volunteers from other wings in the AC wing had been upheld. The Hon'ble Judicial Member

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found that the applications have to be dismissed.

3. The Hon'ble Administrative Member has stated that admittedly the posts for which the selection has been held are of AC Khalasis in the Electrical Branch and they are Group-D posts. The Manual does not prescribe any academic qualification for Group-D posts and the Railways themselves did not prescribe Matriculation for AC Khalasis. The learned Administrative Member observed that having kept in abeyance the order dated 16.8.85 at Annexure-R1 in which higher qualifications have been prescribed, why by the impugned orders at Annexures A5 and A6 higher qualifications have been prescribed. The learned Administrative Member has questioned the competence of the Headquarters, Southern Railway, to issue the circular dated 16.8.85 at Annexure R2 prescribing SSLC pass for Khalasis to be taken on the AC side when the Railway Board had kept their own circular at Annexure R1 in abeyance. He has also observed that whereas in Annexure R1 only the post of Khalasis in S&T Department were identified for SSLC qualification by the Railway Board, the Southern Railway has by Annexure R2 prescribed the higher qualification for Khalasis on the AC side. On the question of opening selection for AC Khalasis to eligible Khalasis of other departments other than the Electrical branch, the learned Administrative Member agrees that after exhausting the eligible Khalasis of Train Lighting and Power side, the Railways are fully empowered to open the selection to other departments also.

4. I have heard the arguments of the learned counsel for both the side and gone through the documents carefully. It came to my notice that the issue framed by the Division Bench in their referral order dated 28.5.92 erroneously mentioned the selection to have been for the posts of Electrical Khalasi/Khalasi Helper. This obviously is wrong because the applicants are already working for years as Electrical

Khalasi and Khalasi Helpers and they are aggrieved not by their selection as Electrical Khalasi/Khalasi Helper but their non-selection as AC Khalasis. The learned counsel for all the parties appearing before me in these two applications agreed with me that the reference to "Electrical Khalasi/Khalasi Helpers" in the referral order dated 28.5.92 should be corrected ^{to} ~~as~~ read as "A.C.Khalasis". Accordingly, I proceed to discuss the point of difference as corrected below:-

"Having regard to the facts and circumstances of this case whether the selection made by the Railway for the post of A.C. Khalasis fixing the minimum educational qualifications and experience is with due authority and whether the operation of the order Ann.R1 dated 16.8.85 has been stayed by virtue of Ann.A8 series."

It ^{is} ~~is~~ an admitted fact that Electrical Khalasis and AC Khalasis are both in Group-D category and are in the common pay scale of Rs.750-940. So when an Electrical Khalasi is selected and posted as AC Khalasi, no question of promotion is involved. It is a pure and simple question of placement of Group-D officials in Group D posts for which they are found to be more suitable. It is correct that the Manual does not prescribe any SSLC qualification or even 8th standard qualification for initial recruitment to Group-D posts. But in spite of this, SSLC pass and persons even with higher educational qualifications apply for Group-D posts and they ^{get} ~~are~~ selected. In the entire body of Group-D posts, the Railways thus may be having a sizeable number of persons who are SSLC pass working against Group-D posts along with other regular Group-D staff who may not have that qualification. I think that the Railway authorities are fully within their powers to post working ^{SSLC pass} Group-D ^{staff} as AC Khalasis where their higher educational qualifications can be better utilised. It will be in the public interest also. Between an SSLC pass Khalasi and non-SSLC Khalasi, if the Railways post the former as AC Khalasi and retain the latter as Electrical Khalasi

both being in the same scale of pay, the latter should have no grievance. The fact that the prospects of promotion on the AC side are better than ~~any~~ⁱⁿ other wings cannot be a valid grievance for the non-SSLC Khalasi, because an SSLC Khalasi with better educational qualification deserves better prospects than one with lesser qualification and this cannot be considered to be hostile discrimination and violative of Arts. 14 and 16 of the Constitution as an SSLC pass and a non-SSLC Khalasi belong to different classifications^{are unequal} and treating them equally will be more unconstitutional than treating them unequally. In State of Jammu & Kashmir vs. Triloki Nath Khosa, AIR 1974 SC 1, the Hon'ble Supreme Court held that even though degree holders and diploma holders are both eligible for the post of Assistant Engineers, the State can amend the Recruitment Rules to make only graduate Assistant Engineers eligible for promotion as Executive Engineer. Similar view was expressed by the same Court in Roopchand Adlakha and others vs. DDA, ATR 1989 (1) SC 437. If such discrimination is possible on the basis of educational qualification for promotion where higher pay is involved, there is no reason whatsoever why similar discrimination cannot be followed for deployment of staff amongst posts carrying the same pay scale.

5. It may also be pointed out that the Railway Board's order dated 16.8.85 at Annexure R1 which laid down educational qualifications for recruitment of Khalasis pertain to direct recruitment to Group-D vacancies as the following extracts from that circular would indicate:-

"The aforesaid minimum qualifications will apply to engagement of 'fresh faces' as casual labour or as substitutes, as also for direct recruitment in Group 'D' vacancies, wherever engagement of 'fresh faces' or direct recruitment is permitted under the instructions in force from time to time."(emphasis added)

Whether this circular is in force or in abeyance is not relevant to the issue before us which is one of placement and deployment of existing regular Khalasis already working as regular Group D staff as AC

Khalasis in the same scale of pay. Placement and posting is an incidence of service and one cannot have a right to be posted to a particular post or type of post so long as his grade and pay scale and level of post remain protected. The provision of the Indian Railway Establishment Manual which is also for initial recruitment, is not relevant, where the Railways do their screening on the basis of educational, physical and other attainments of individual member of the staff would be best utilised.

6. I am fully convinced that the impugned orders at Annexures A5 and A6 are in the nature of legitimate administrative function of deployment of staff in accordance with their suitability and no element of discrimination offending any provision of law or Constitution is discernible. The order at Annexure R1 dated 16.8.85 being not relevant, it is having been stayed by virtue of Annexure A8 series, will have no impact on the impugned orders at Annexures A5 and A6.

I decide the issue as follows:-

" Having regard to the facts and circumstances of this case, the selection made by the Railways for the post of A.C.Khalasi fixing the minimum educational qualification and experience is with due authority and the operation of the order ^{at} Ann.R1 dated 16.8.85 being relevant only to initial direct recruitment, whether it is stayed by virtue of Ann.A8 series or not, has no consequence so far as the authority and validity of the impugned orders at Annexures A5 and A6 are concerned. These impugned orders passed on proper administrative authority and judgment cannot be faulted as they are not related to initial direct recruitment of AC Khalasis."

7. Registry is directed to place my opinion before the appropriate Division Bench for final orders.


(S.P.MUKERJI)
VICE CHAIRMAN

DA 249/914
583/91

S.B.
(2.4.91) /

ORDER OF THE BENCH

In the light of the final opinion of the 3rd Member, Hon'ble Shri S.P.Mukerji, Vice Chairman, the impugned orders at Annexures-A5 and A6 are not discriminatory and they do not offend the provisions of law or Constitution of India. Hence, there is no substance in these applications and they are only to be dismissed. Accordingly, we dismiss them. No order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER


(N.V.KRISHNAN)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision: 17-6-1993

Review Application No.38 of 1993 in OA-249/91

1. P Charles
Electrical Khalasi/TL
Quilon R.S. & P.O.

2. N Alwar
Electrical Khalasi/TL
Quilon R.S. & P.O.

- Review applicants

Mr P Sivan Pillai

- Counsel for the
review applicants

V.

1. Union of India represented by
The General Manager,
Southern Railway, Park Town P.O.
Madras-3.

Respondents/Original
respondents in OAs
249 & 583 of 1991

2. The Divisional Personnel Officer,
Southern Railway, Trivandrum-14.

- -do-

3. The Sr. Divisional Electrical
Engineer, Southern Railway,
Trivandrum-14.

- -do-

4. A Prem Singh
AC Khalasi

- Through the Divisional
Personnel Officer,
S.Rly, Trivandrum-14.

5. S Jagdheesh, Khalasi

- -do-

6. Mohan Chandran Unnithan, Khalasi

- -do-

7. A Sulaiman Kunju, Khalasi

- -do-

8. N Murugan, Khalasi

- -do-

9. N Gangadharan, Khalasi

- -do-

10. PC Radhakrishnan, Khalasi

- -do-

11. PD John, Khalasi

- -do-

12. S Rajan, Khalasi

- -do-

13. NK Somasekharan Nair, Khalasi

- -do-

14. K Mathew, Khalasi

- -do-

15. TB Pavitran, Khalasi

- -do-

16. TR Pavitran, Khalasi

- -do-

17. M Phoobathy, Khalasi

- -do-

18. KC Prakash, Khalasi

- -do-

19. N Dorasamy, Electrical Khalasi, - Respondents/Original
C/o Electrical Foreman, applicants in OA
Southern Railway, 249/91
Trivandrum Central
20. A Varuvel Antony, -
Electrical Khalasi, -do-
C/o Electrical Foreman,
Southern Railway,
Trivandrum Central.
21. P Daniel Kiliakanam, -
Electrical Khalasi, -do-
C/o Electrical Foreman,
Southern Railway,
Trivandrum Central.
22. P Ramaraj, Electrical Khalasi, -
c/o Electrical Foreman, -do-
Southern Railway,
Trivandrum Central.
23. A Joseph Raj -
Electrical Khalasi, -do-
C/o Electrical Foreman,
S.Rly. Cochin Harbour Terminus.
24. I Philip, Electrical Khalasi, -
C/o Electrical Foreman, -do-
S.Rly, Ernakulam South.
25. CC Balan, Electrical Khalasi, -
C/o Electrical Foreman, -do-
S.Rly, Ernakulam South.
26. Kutty Asan PC, Respondents/
Electrical Khalasi, Original Applicants
Office of the Sr. Electrical in OA-583/91
Foreman, S.Rly, Ernakulam South -
27. PJ Baby, Electrical Khalasi, -
C/o Electrical Chargeman/A, -do-
Office, S.Rly, Trichur.
28. R Subramanian, -
Electrical Khalasi, -do-
Electrical Charge Man/A Office,
S.Rly, Trichur.
- Mrs Sumathi Dandapani - Counsel for the
respondents 1 to 3

CORAM

HON'BLE MR N DHARMADAN, JUDICIAL MEMBER
&
HON'BLE MR R RANGARAJAN, ADMINISTRATIVE MEMBER

JUDGEMENT

N Dharmadan, Judicial Member.

Review petitioners, who are not parties in the O.A.
have filed this R.A. for a review and rehearing of the


O.A-249/91. Since there is long delay in filing the R.A.,
an M.P. with diary No.2455/93 for condoning the delay/ This ^{has been filed.} This
is strongly opposed by the original respondents.

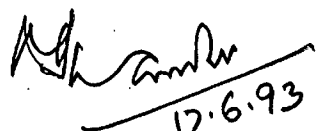
2. The only reason mentioned for condoning the delay is that though the applicants are parties in O.A-96/92 which is pending before this Tribunal, the petitioners came to know of the decision in this case only on 28.2.1993 when they visited the office of their learned counsel. The learned counsel for the petitioners informed that the Tribunal has already decided identical issue in O.A-249/91 by pronouncing the judgement on 16.11.1992. The same learned counsel is appearing in both the cases. However, according to the petitioners, they came to know of the decision in O.A-249/91 only on 28.2.1993 when they visited the office of the learned counsel.

3. After hearing the learned counsel on both sides, we are satisfied that there is no bonafides in the statements in the M.P. for condonation of delay. This case was posted before Bench for orders thrice. Originally it was posted before the Bench on 28.5.1992 for pronouncement of the order when there was a difference of opinion. The case was again posted in the open court on 24.8.1992 for passing orders. However, the final judgement on the basis of the decision of the third Member was also pronounced in the open court on 6.11.1992. The R.A. has been filed only on

12.3.1993 with an M.P. for condonation of delay. It is unbelievable that the applicants were not aware of the pendency of the proceedings of this court particularly, when the case was posted thrice in the open court for pronouncement of orders and they are parties in a similar O.A. pending before the same Tribunal.

4. Having heard the counsel on either side, we are satisfied that the applicants have not explained the delay, giving satisfactory and convincing reasons. Hence the application for condonation of delay is to be rejected. Accordingly, we reject the M.P. Subsequently, R.A. is also dismissed. No costs.


(R RANGARAJAN)
ADMINISTRATIVE MEMBER


(N DHARMADAN)
JUDICIAL MEMBER
17.6.93

Dated, the 17th June of 1993

trs