

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.3/2001

Tuesday, this the 27th day of February, 2001.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

T.R.Suresh Babu,
Khalasi,
O/o the Depot Store Keeper
(Construction),
Southern Railway,
Ernakulam Junction. - Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by
General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Madras-3.
2. The Chief Engineer,
Construction,
Southern Railway, Egmore,
Chennai-8.
3. Deputy Chief Engineer,
Construction,
Southern Railway,
Ernakulam.
4. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum-14. - Respondents

By Advocate Mr K Karthikeya Panicker

The application having been heard on 27.2.2001, the Tribunal
on the same day delivered the following:

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O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The applicant who joined as a Casual Labourer in the open line organisation of Trivandrum Division of Southern Railways where he was granted temporary status with effect from 6.3.1980, was empanelled for absorption in the regular service in the year 1982 and was posted as a Khalasi on regular basis in the Construction organisation of the Southern Railway by office order No.55/92/WP dated 8.4.92 by the 4th respondent. Eversince thereafter, the applicant has been continuing in the Construction organisation. While he was on casual leave on 18.12.2000, he came across the order A-1 by which he was along with some others, repatriated to the Trivandrum Division. According to the applicant, to his knowledge, there was no lien in the Trivandrum Division and his repatriation was not warranted as the respondents have retained as many as 8 persons who are junior to him. With these allegations, the applicant has filed this application to set aside A-1 to the extent it affects him and for a direction to the respondents to grant him all consequential benefits.

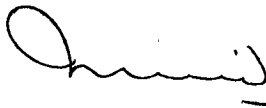
2. The respondents in their reply statement seek to justify the impugned order on the ground that on account of want of work in the Construction organisation and as the service of the applicant as Khalasi is required in Trivandrum Division, he is being repatriated and therefore, the action is unexceptional. The applicant has filed a rejoinder in which he has stated that going by the guidelines issued by the Chief Personnel Officer, in the event of surplusage, the persons to

be moved last are those drafted from the territorial Division and that as 7 persons from other department are retained, there is no justification in the applicant's repatriation. The applicant has also produced A-3 a copy of the Circular issued by the Chief Personnel Officer.

3. We have gone through the pleadings and documents and have given our anxious consideration to the facts and circumstances emerging therefrom as also from the arguments of the learned counsel on either side. The contention of the applicant that he belongs to the Construction organisation and no lien has been kept in the Trivandrum Division is unsustainable. The applicant even going by his own averment, belonged to the open line as a casual labourer was empanelled as a Khalasi and was sent to the Construction organisation to meet the requirement there. As the Construction organisation does not require Khalasis any more at present, the applicant is being repatriated to his department. The retention of 7 or 8 Gangmen even though junior to the applicant would not invalidate or vitiate his repatriation because Gangmen are retained as their retention might be justified on requirement while the retention of Khalasis may not be needed. The applicant who is on deputation to the Construction organisation, has no right to claim that he should be retained there even though his service is no more required for want of work.

4. In the light of what is stated above, finding no merit the application is dismissed, leaving the parties to bear their own costs.

Dated, the 27th February, 2001.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES REFERRED TO IN THE ORDER:

1. A-1: True copy of office order No.C/49/2000 dated 20.12.2000 issued on behalf of the 2nd respondent.
2. A-3: A true copy of the order No.P(S) 676/1/5/Surplus/Vol.IV dated 26.3.76.

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A.No.11/2001

in

O.A.No.3/2001

CORAM: Thursday, the 4th day of October, 2001.

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

T.R.Suresh Babu,
Khalasi, office of the Depot Store Keeper
(Construction)/Southern Railway,
Ernakulam Junction.

.. Review Applicant

By Advocates S/Sri T.C.Govindaswamy, K.N.Anthru & Martin
G.Thottan)

vs.

1. Union of India, rep. by General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai-3.

2. The Chief Engineer, Construction,
Southern Railway, Egmore,
Chennai-8.

3. Deputy Chief Engineer, Construction,
Southern Railway, Ernakulam.

4. The Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum-14.

.. Respondents

(By Advocate Sri Karthikeya Panicker)

The Review Application having been heard on 6.8.01, the
Tribunal on 4.10.2001 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

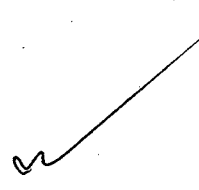
The applicant in the Original Application has filed
this Review Application seeking a review of the order dated
27th February, 2001 (Annexure RA-1) dismissing the Original
Application. The facts can be briefly stated as follows:

The applicant who started his service as a casual
labourer in the open line organisation of Trivandrum
Division of the Southern Railway, was granted temporary
status on 6.3.1980, empanelled for absorption in the regular



service in the year 1982 and was posted as a Khalasi in the construction organisation of the Southern Railway by order dated 8.4.1992. While the applicant was continuing in the construction organisation and was on casual leave on 18.12.2000 coming across an order dated 20.12.2000 (Annexure A1 in the Original Application) repatriating him to Trivandrum Division, he filed the Original Application for setting aside the Annexure A1 order to the extent it affects him and for a direction to the respondents to grant him consequential benefits. It was alleged in the Original Application that the applicant had been regularly absorbed in the construction organisation and that 7 persons who are junior to the applicant in the construction organisation have been retained while the applicant was repatriated which is against the principles laid down in the order No.P(S)/676/1/5/Surplus/Vol.IV dated 26.3.1976 issued by the Chief Personnel Officer (Annexure A3) and that the repatriation of the applicant was not justified in law.

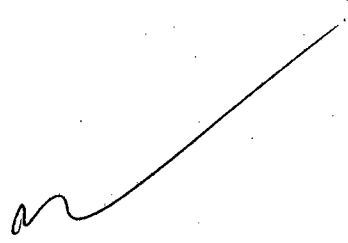
2. The respondents in their reply to the O.A. contended that the applicant had a lien in the Trivandrum Division of the Southern Railway, that his repatriation by the impugned order was necessitated on account of want of work. Regarding the retention of the 7 persons named in the application who are said to be juniors of the applicant, the respondents contended that those persons are Gangmen and the applicant's designation being Khalasi, he belonged to a



totally different seniority unit and therefore he cannot be compared with those Gangmen who have been retained. On a consideration of the rival contentions we held that the applicant's repatriation for want of work could not be interfered with. We also observed as follows:

"The retention of 7 or 8 Gangmen even though junior to the applicant would not invalidate or vitiate his repatriation because Gangmen are retained as their retention might be justified on requirement while the retention of Khalasis may not be needed."

The Original Applicant has filed the R.A. alleging that the order of the Tribunal suffers from an error apparent on the face of record, since it failed to take note that the applicant as also Gangmen who are retained, have been working as Khalasis in the construction unit and if there be a curtailment in the cadre, according to the principles envisaged in Annexure A3, juniors in the construction unit should have been first repatriated and those belonging to the same department and the territorial jurisdiction where the construction unit is situated should have been repatriated last. It has also been alleged in the application that the Divisional Personnel Officer, Trivandrum Division issued letter dated 29.1.2001 stating that there was no vacancy in the category of Khalasis in the Engineering Department with medical classification of BI as well as no vacancies in Group-D with medical classification of CI and that the repatriation of the employees was not covered under the Manpower planning and that for these reasons, the Division was not in a position to accommodate the employees unfit in Class BI(Annexure RA-2), that the



Executive Engineer, Construction Organisation has issued order dated 31st January, 2001 directing that the Khalasis transferred should be taken back in the construction organisation and that another order dated 19.2.2001 (Annexure RA-4) has been issued by the construction wing retaining 6 Khalasi labourers in the construction organisation, however they should be relieved on 30.3.2001 and that if these orders were brought to the notice of the Tribunal, the decision would have been different. As the RA-2 to RA-4 orders could not be brought to the notice of the Tribunal at the time of hearing of the Original Application, it is necessary in the interest of justice to consider them also. The applicant prays that the order may be reviewed and the O.A. be allowed. to review the order and allow the application.

3. Contesting the Review Application, the respondents have filed a statement in which they do not dispute that 7 persons holding substantive post of Gangman who have been retained in the construction organisation are working there as Khalasis. The fact that they were junior to the applicant as Khalasi in the construction unit is also not in dispute.

4. We have heard the learned counsel on either side and have carefully gone through the materials placed on record.

5. Annexure A3 to the O.A. is a circular issued by the Southern Railway, Headquarters Office, Personnel Branch,

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Madras-3 on the subject of filling up of vacancies /re-adjustment of staff due to curtailment in the cadre in the construction units. It is profitable to extract the circular:


" In this office P.B.Circular No.93/73 dated 3.7.1973, detailed procedure has been outlined for drafting of office staff to fill up the vacancies in the construction organisation. Accordingly, first preference is given to the volunteers from the works Branch/Personnel Branch of the Division or Headquarters, as the case may be, where construction offices are located. In the event of vacancies still becoming available in the construction units, second preference is given to the volunteers from the Works Branch/Personnel Branch of other divisions including Headquarters and third preference to the volunteers from other department excluding stores and Accounts of the Divisions/Headquarters.

In the event of curtailment in the cadre in the construction units, the staff should be rendered surplus in the reverse order of preference for filling up the vacancies as laid down in the P.B.Circular No.93/73, keeping in view the Board's instructions contained in their letter No.E(NG)66 TR2/20 of 27.7.1966, forwarded under cover of this office letter No.P(S)676/P dt. 19.8.1966. For this purpose, the junior most employee from among the staff who have been drafted from other department is to be rendered surplus first. After exhausting the entire staff from other department the staff from other divisions have to be moved in the 2nd phase. The staff of the unit in which territorial jurisdiction the construction offices are located should be moved only in the last phase.

Even in respect of each group of staff referred to above, staff rendered surplus should be junior most in the respective groups, in keeping with the Board's instructions.

The above instructions should be followed strictly and any deviation should have the prior approval of this office.'

6- It is evident from what is quoted above that in filling up the vacancies in the construction organisation first preference is to be given to the volunteers from the Works Branch/Personnel Branch of the Division or Headquarters as the case may be and while repatriating the

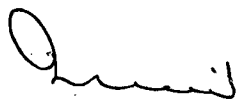


volunteers in the event of curtailment in the cadre, those belonging to the Works Branch/Personnel Branch of the Division or Headquarters have to be repatriated last. The staff of the unit in which the territorial jurisdiction the construction offices are situated is to be moved only in the last place. It is not disputed that the applicant belonged to the Works Branch of the Trivandrum Division where the construction unit is situated. Gangmen who have been retained belonged to the Maintenance wing and do not belong to the Works Branch. Therefore, going by the circular, the applicant could have been repatriated only after the repatriation of the Gangmen. Further the case of the applicant that 7 Gangmen who are retained, are junior to him in the construction organisation is not in dispute. While repatriating the volunteers on curtailment of the cadre those who last come should have been first repatriated, adopting the principle of last come first go and therefore the repatriation of the applicant who belonged to the Works Branch of the territorial jurisdiction of the Trivandrum where the construction unit is situated retaining Gangmen who are working as Khalasis in the construction unit and are junior to the applicant as Khalasis in the unit, is wholly unjustified. This aspect was lost sight of as the points were not properly highlighted at the time when the O.A. was heard. The view taken in the order in the O.A. therefore suffers from an error apparent on the face of records. For that reason, we are of the considered view that the Review Application is to be allowed and O.A. is to

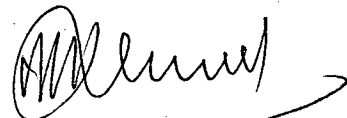
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be allowed directing the respondents to retain the applicant till persons junior to him and belonging to other departments and divisions are repatriated.

7. In the result the Review Application is allowed. The order of the Tribunal dismissing the Original Application made on 27th February 2001 is recalled. The Original Application is allowed setting aside the repatriation of the applicant from the construction unit. The order Annexure A1 to the extent it repatriates the applicant to the Trivandrum Division retaining 7 Gangman who have been working as Khalasis in the construction unit who are juniors to the applicant, is set aside and the respondents are directed to allow the applicant to perform duties as Khalasi in the construction organisation till his repatriation becomes necessary, strictly in accordance with the guidelines contained in Annexure A3 circular. There is no order as to costs.



(T.N.T. NAYAR)
ADMINISTRATIVE MEMBER



(A.V. HARIDASAN)
VICE CHAIRMAN

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APPENDIX

1. Annexure RA 1: True copy of the order in O.A.No.3/2001 dated 27th February, 2001 of this Hon'ble Tribunal.
2. Annexure RA 2: True copy of the order No.V/P-536/I/Vol.V dated 29.1.2001 issued by the Senior Divisional Personnel Officer, Trivandrum Division.
3. Annexure RA3: True copy of the letter No.P.676/CN/ERS dated 31st January, 2001 issued by the Executive Engineer(Construction), Ernakulam Junction.
4. Annexure RA4: True copy of the letter No.P 676/I/ CN/MPP dated 19.2.2001 issued by the Chief Engineer Construction, Madras.
5. Annexure R1: True copy of the relevant Page 4 of the service Register

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