

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. XXXXXX 257 1990

DATE OF DECISION 31.7.1991

K. Vijayan & 26 others Applicant (s)

M/s K Ramakumar & Advocate for the Applicant (s)
VR Ramachandran Nair

Versus

UOI rep. by the General Manager Respondent (s)
Southern Railway, Madras & 3 others

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman
and

The Hon'ble Mr. A.V. Haridasan - 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

(Mr. A.V. Haridasan, Judicial Member)

The applicants who are working as Diesel Khalasi in the Ernakulam Loco-Shed under Trivandrum Division of the Southern Railways have filed this application under Section 19 of the Administrative Tribunals Act, praying that, employment notice 1/90 of the Railway Recruitment Board, Trivandrum at Annexure-A proposing to fill the vacancies of Diesel Assistants in Trivandrum Division entirely by Direct Recruitment may be set aside and that the respondents may be directed to fill up the posts of Diesel Assistants by promotion as well by fixing a percentage if necessary.

2. The applicants, 27 in number, who were originally recruited as Loco-Khalasis in Steam Loco were posted as Diesel Khalasis, owing to dieselisation. In steam loco Khalasis had chances of promotion as Firemen 'C' and Firemen 'B' and then to Firemen 'A'. According to the Recruitment Rules the posts of Diesel Assistants are to be filled from among qualified Firemen 'B' and 'C' and direct recruitment can be resorted to only in the absence of such qualified hands. When the applicants were posted as Diesel Khalasis, they lost the chance of being promoted as Firemen 'C' and 'B' and to come within the feeder category of Firemen 'C' and 'B' for recruitment to the post of Diesel Assistants. The applicants were deployed to Diesel side owing to dieselisation of locos. The applicants individually and through union represented that some vacancies at least to the posts of Diesel Assistants may be set apart for their promotion as Diesel Assistants as they ^{had} ~~had~~ only very little chances for promotion in their line as Diesel Fitters, etc. Seeing that the Railway administration had taken steps to fill ^{up} ~~all~~ the 308 vacancies of Diesel Assistants in Trivandrum and Palghat Divisions ^{by direct recruitment} ~~the applicants have filed this application to restrain such a move and to have them considered for promotion as Diesel Assistants.~~

3. The respondents have contended that the Diesel Khalasis have their own promotion chances as Diesel fitters as per Avenue Chart, that they do not form feeder

category of Diesel Assistants, that those who among the applicants have requisite qualification can apply for Direct Recruitment and that Direct Recruitment has been resorted to for filling up of the vacancies because there are no qualified Firemen 'B' and 'C' to be considered for promotion.

4. We have heard the arguments of the learned counsel on either side and have also carefully perused the documents produced. From Annexure-D and E produced by the applicants themselves it is evident that Diesel Khalasis do not ~~form~~ ^{form} feeder category for promotion to the posts of Diesel Assistants and that only Firemen 'C' and 'B' form the feeder category. But the argument of the learned counsel for the applicants is that, as the applicants have been deployed to Diesel Shed, as they becomming surplus in the steam side the opportunity of being promoted as Firemen 'C' and 'B' have been denied to them and that, therefore, considering their long experience in the steam loco and in Diesel side, they are entitled to be considered to be promoted as Diesel Assistants. It is also pointed out that the applicants are all qualified to be appointed as Diesel Assistants. But they may not be eligible to seek appointment by direct recruitment on account of age limit. The learned counsel invited our attention to the circular letter dated 24.4.1969 issued by the DPO, Olavakkode, Annexure-G wherein at para 2 it is seen stated:

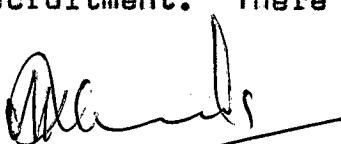
"The Khalasies/cleaners of the Diesel shed will seek promotion (after an adequate period of three and a half years on Diesel side) as Diesel Assistant or Fitter Skilled as per their option. Based on the result of their trade test, they will have to seek their further promotion and have to continue thereafter in the avenue in what they pass. Khalasies/cleaners with Diesel side who are matriculates who are medically fit in A1 will be considered for the post of Driver Assistants after passing the prescribed suitability test. For the post of Diesel Fitters, non-matriculates having adequate literacy will also be considered."

5. The learned counsel further brought to our notice the office memorandum of the Divisional Personnel Officer, Trivandrum dated 11.10.90 and 1.3.91, Annexure-IJ and K by which Group 'D' officials of different categories, including some of the applicants have been called for medical examination to be considered for appointment as Diesel Assistants.

As per Annexure-I, among others petitioners 1, to 10 and 16 have been directed to undergo medical examination in class A1 in order to send them for training to the post of Diesel Assistants after having found fit in Class-A1. It is seen from Annexures-I, J and K that not only Diesel Khalasis, but all sorts of Group 'D' such as Motor Vehicle Drivers, Carpenters, Cooks, Material checker, etc. have been considered for appointment as Diesel Assistants. The learned counsel therefore argues that, not to extend the same benefit to the other applicants is arbitrary and opposed to Article 14 and 16 of the Constitution. The respondents have produced

Annexure-R5 Railway Board's letter dated 15.3.90 and argued that Annexures-I, J and K were issued on the basis of the relaxation mentioned in the circular. Since, all the applicants were deployed to the Diesel Loco Shed on their becoming surplus owing to Dieselisation, we are of the view that the remaining applicants are also entitled to the same consideration as applicants 1, 2, 4 to 10 and 16 and the other Group 'D' staff considered in Annexures-I, J and K. Therefore, before filling up the vacancies to the post of Diesel Assistants by direct recruitment, the applicants are entitled to be considered for appointment.

6. In the result, in the light of the foregoing discussion, we allow the application to the extent of directing the respondents to consider the remaining applicants also for training and appointment as Diesel Assistants just as applicants 1, 2, 4 to 10 and 16 and the other Group 'D' staff were considered as is seen from Annexures-I, J and K and then only resort to Direct Recruitment. There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


(S.P.MUKERJI)
VICE CHAIRMAN

31.7.1991

(3)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

R.A.55 of 1992 in

O. A. No. 257 of

T.A. No.

1990

DATE OF DECISION 5-6-1992

Union of India, General Manager, S. Railway & 3 others / Review Applicant (s)

Mrs Sumathi Dandapani Advocate for the Applicant (s)

Versus

Mr Vijayan & 26 others Respondent (s)

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

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

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

This R.A. has been filed by the respondents in the O.A. raising certain new arguments against the decision. The O.A. was disposed of on the basis of the pleadings and documents on record. No error apparent on the face of records or any new facts or circumstances which render the decision erroneous has been brought out in the R.A. Therefore, we do not find any justifiable reason to review the order. The R.A. is therefore dismissed.

(AV HARIDASAN)
JUDICIAL MEMBER

trs

5-6-1992

(SP MUKERJI)
VICE CHAIRMAN

R.A. 55/82
As on 02. 25/7/80

A part of 'RA'
is not available
R

22.6.82.

Mr. K. Ramkumar.
Mrs. Dandapani.

This R.A. should be deleted from
the Cause list of today.

PL

M

S/L

AVH
25/7/80

SPM
25/7/80

18.2.92

SPM&AVH

CCP 22/92

Mr.Ramakumar through proxy.
Mrs.Dandapani

Smt.Sumati Dandapani takes notice for respondents in CCP. She wants to file a statement in reply to the CCP which she may do siwhtin three weeks with a copy to the learned counsel for the petitioner.

List for further directions on 10.3.92.

2/2
18.2.92

10.3.92

Mr. Ramachandran Nair

Mrs.Sumati Dandapani

Due to paucity of time, list for
further hearings on 20.4.92

AVH
10/3/92

SPM
10/3/92

Reply Affidavit
by Appellant
filed on 20.3.92

10/3/92

Addl. Affidavit
by Repoh. on 20.3.92

10/3/92

20-4-92
(12)

Mr VR Ramachandran Nair
Mrs Dandapani

The learned counsel for the petitioner brought to our notice the averment in para-2 of the rejoinder dated 19.3.92 by the petitioner, wherein it has been stated that the Railways had notified 308 vacancies of Diesel Assistants in the year 1990 at Annexure-A for Trivandrum and Palghat Division and that even so inspite of the directions contained in the final order in the OA that only after appointing the applicants as Diesel Assistants, direct recruitment should be resorted to, the respondents have after giving training employed some of the direct recruits as Diesel Assistants at Erode.

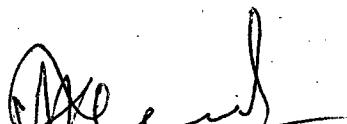
In the reply statement filed on 19.3.92 by the respondents these averments have not been controverted probably because the additional affidavit and reply statement were simultaneously filed.

It will be advantageous to ascertain whether all the 308 vacancies of Diesel Assistants/announced in 1990 had already been filled/and if filled, what was the manner in which these vacancies were filled. It is also necessary for the disposal of the CCP to ascertain whether the ~~applicants have been~~ averments that some of the directly recruited persons are being engaged as Diesel Assistants. is true or not.

Therefore, we direct Shri Babu, General Manager, Southern Railway, Madras to file an affidavit explaining whether the 308 vacancies announced in the year 1990 for Palghat and Trivandrum have been filled and if filled, state the source from which the incumbents ~~were~~ were drawn and also to make clear whether any person directly recruited ~~are~~ ^{is} being utilised as Diesel Assistants as averred in the affidavit filed by the petitioner. This should be done within a period of one month from today.

List the CCP for further hearing on 26.5.92

A copy of this order be given to the learned counsel for the parties by hand.


(AVH)

S. M.
20/4/92
(SPM)

20-4-1992

26-5-92

(2) Mr VR Ramachandran Nair
Mrs Dandapani

List for further direction on 18.6.92 along the cases indicated in the list submitted by the learned counsel for the respondents.

(AVH)



(SPM)

26-5-92



I.O. issued
26/4/92
AVH

G. M. & Rly.
Madras filed
an affidavit
by 15-5-92



A part of the
OA was not
in the bundle.

26/5

A copy of the OA
is under circulation
with RA. 55/PL
(SPM / AVH)



5-6-92

Mrs Dandapani
Mr. VR Ramachandran Nair

MP-762/92

Heard.

The MP is allowed.

The case be listed on 22.6.92
instead of 18.6.92

Sd/
S. Mukherji

(AVH)

(8pm)

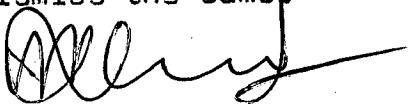
5-6-92

22-6-92
(24)

Mr VR Ramachandran Nair
Mr Tyagarajan

We have heard the learned counsel for the parties on the CCP. The General Manager, Southern Railway has filed an affidavit which has been referred by Shri Tyagarajan, the learned counsel for the Railways. Shri Tyagarajan stated at the Bar that after 31.7.91 when our judgement in OA-257/90 was delivered, no vacancy of Diesel Assistant in Trivandrum Division has been filled up by direct recruit. The learned counsel for the petitioner has not brought out any specific instances of Direct recruitment appointed as Diesel Assistant in Trivandrum after 31.7.91.

Accordingly, we see no force in the CCP and ~~the~~ we dismiss the same.



(AVH Aridasan)

Sd/
S. Mukherji

(SPMukherji)

22-6-92

Received
25/6/92
Mr. Mukherji
F.O. Commissioner
on 26-6-92

29/6