

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA 266/99

Wednesday, this the 27th day of June, 2001.

CORAM :

HON'BLE SHRI A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE SHRI T.N.T. NAYAR, ADMINISTRATIVE MEMBER

1. B. Nandakumar,
S/o Balakrishna pillai, aged 38,
Electrical Khalasi, ESIC Hospital
(Employees State Insurance Corporation),
Paripally, Kollam, CPWD(Central Public Works Deptt.),
Central Electrical Division, Trivandrum,
residing at Vattam Parambathu,
Kavanadu P.O., Kollam.
2. U. Rajan, S/o Unnikrishna Pillai, aged 38,
Electrical Khalasi, ESIC Dispensories and Staff
Quarters, Kollam, CPWD, Central Electrical Division,
Trivandrum, residing at Kizhakkedathu Veedu,
Vadakkekara, Asthamudi, Kollam.
3. V.P. Mohanlal, Electrical Khalasi,
ESIC Hospital, Ezhukone, Kollam,
CPWD, Central Electrical Division,
Trivandrum, residing at Thekkedathu Veedu,
Ashramam P.O., Kollam.Applicants

(By Advocate Mr. Jayapal Menon)

1. The Superintending Engineer(Electrical),
Madras Central Electrical Circle,
Central PWD, Madras.
2. Assistant Engineer,
Central Electrical Sub Division,
CPWD, Trivandrum.
3. Executive Engineer,
Trivandrum Central Electrical Division,
CPWD, Trivandrum.Respondents

(By Mr. T.A. Unnikrishnan, ACGSC)

The application having been heard on 27.6.2001, the
Tribunal on the same delivered the following :

O R D E R

HON'BLE SHRI A.M. SIVADAS, JUDICIAL MEMBER

The applicants seek the following reliefs :-

(i) Direct the respondents 2 and 3 to report the
vacancy of one Wireman and one Assistant Wireman and
one Operator and one Khalasi at E.S.I.C. Hospital,
Parippilly where the 1st applicant is working and the

vacancies of one Wireman, one Assistant Wireman and two Khalasis existing at E.S.I. Dispensaries and Staff Quarters, Kollam District and the vacancy of one Operator and one Assistant Operator, one Khalasi at ESIC Hospital, Ezhukone, Kollam, and on such reporting the 1st respondent may be directed to fill up the vacancies by promoting the applicants to the post of Assistant Wireman/Assistant Operator respectively with effect from the date on which the applicants joined the present establishments where they are presently working, since the said vacancy existed at the time of their joining there and on such promotion the applicants may be further promoted to the post of Wireman/Operator in the existing vacancies in the establishments where they are presently working.

(ii) Direct the respondents to issue the consequential benefits and arrears of salary to the applicants on promotion to the existing vacancy with effect from the date of joining to the respective establishment where the applicants are presently working.

(iii) Award the cost to the applicants, and

(iv) Such other relief this Hon'ble Tribunal think fit and proper.

2. Applicants say that they were originally appointed as Assistant Wireman under the 2nd respondent on 2.9.95 as Muster Roll Employees. They are qualified to the post of Assistant Wireman. They are doing the same duties of Wireman/Assistant Wireman. Vacancy to the post of Wireman/Assistant Operator and Wireman/Operator are existing. The act of respondents 2 and 3 in not filling up the existing vacancies or promoting them is illegal and arbitrary. Respondents 2 and 3 ought to have reported the existing vacancies to the 1st respondent and ought to have taken necessary steps for filling up the existing vacancies by way of promotion.

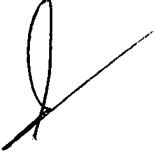
3. Respondents resist the OA contending that it is false to say that the applicants were originally appointed as Assistant Wireman/Assistant operator. They were engaged by the Department as Nominal Muster Roll(N.M.R.). They were never appointed as against any vacancy post. The post of Assistant Wireman is filled up by promoting eligible Electrical Khalasis after conducting trade test, and competency of an Electrical Khalasi for the post of Assistant Wireman is measured from his



performance in the trade test. At present there is a ban on conducting the trade test. When the ban is lifted, the trade test will be conducted and eligible Electrical Khalasis will be promoted. It is applicable to the applicants as well. Promotion of Assistant Wireman is based on the seniority depending upon the arising of vacancies. Applicants case for promotion to the post of Assistant Wireman will be considered in future as per seniority and performance in trade test and hence the applicants have to wait for promotion in turn till vacancy arises/new additional posts are sanctioned by the Government.

4. One of the ground raised is that respondents 2 and 3 ought to have taken necessary steps for filling up the existing vacancies by way of promoting the applicants. Annexure A10 is the CPWD Manual regarding Recruitment Rules relating to several posts including that of Assistant Wireman. For the post of Assistant Wireman, the method of recruitment is 25% by direct recruitment and 75% on the basis of seniority-cum-fitness. Applicants did not say whether the vacancies available are the vacancies for direct recruitment or for promotees. Since it is an admitted case of the applicants that as they are to be promoted, they can be considered only for the 75% vacancies. It is up to the applicants to convince the Tribunal that the vacancies available are for the promotees. Nothing is discernible from the OA.

5. Respondents have specifically contended that there is a ban on conducting the trade test. It is submitted that as soon as the ban is lifted, the trade test till be conducted and eligible khalasis will be promoted.



6. The learned counsel appearing for the applicants submitted that the ban has been lifted and the applicants have come out successful in the trade test conducted by the Department. If they have come out successful in the trade test conducted by the Department, proof of the same could have produced by the applicants. It was submitted by the learned counsel appearing for the applicants that the result of the trade test was announced about six months ago. If that is so, the applicants could have produced proof of the fact that they have come out successful in the trade test. But they have not done.

7. It is to be considered what will be the position even if vacancies are available. Is it incumbent on the Administration to fill up vacancies even if the applicants are qualified. In *Shankarsan Dash Versus Union Of India (1991) 3 SCC 47*, it has been held that

"Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted."

8. So it is clear that the State is under no legal duty to fill up all or any of the vacancies unless the recruitment rules so indicate. Here the recruitment rules do not indicate so. From the nature of the averments made in the reply statement, there is no reason to hold that there is any lack of bona fides on the part of the respondents. There is no case for the applicants that there is any lack of bona fide on the part of the respondents.



9. That being the position, even if the applicants are eligible, there cannot be a direction to the respondents as prayed by the applicants in the OA.

Accordingly, the OA is dismissed. No order as to costs.

Dated the 27th of June, 2001.



T.N.T. NAYAR,
ADMINISTRATIVE MEMBER



A.M. SIVADAS,
JUDICIAL MEMBER

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List of Annexures referred in the Order :

Annexure A10: True copy of the relevant portion of the CPWD Manual.