

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 281
T. A. No. 1991

DATE OF DECISION 20.3.92

T. Rajakumar and others Applicant (s)

Mr. M. Ramachandran Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
General Manager, Southern Railway
Madras and others

Mr. M. C. Cherian Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
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. N. DHARMADAN, JUDICIAL MEMBER

The applicants are casual mazdoors who were screened and appointed as Gangmen in the Southern Railway; but they were not sent to the gang after inclusion in the list. According to the applicants, they are working as Khalasis under the third respondent. When the dispute existed regarding decasualisation and absorption of casual mazdoors in the regular railway service, some of the casual mazdoors filed O.A. 613/89 and connected cases/ were heard and disposed of indicating the method of absorption of the casual mazdoors and filling up of the excess posts with regular gangmen. After the judgment, when the Railway

attempted to implement the directions in the judgment and started filling up of the posts of Khalasis which had arisen because of decasualisation, the applicants had also volunteered for being absorbed as regular Khalasis in the grade of Rs. 750-940. Annexure-II is the copy of the application submitted by the first applicant expressing his willingness. The other applicants have also submitted similar applications. But no call letter was received by the applicants. As a matter of fact, without giving opportunity to the applicants, the Railway absorbed various other persons in the regular posts of Khalasis ignoring the rights of the applicants. Annexure-IV is the list of Khalasis selected for posting of such persons in the regular posts. Aggrieved by the said order, the applicants filed this application with the following reliefs:

- "a) to call for the records of the case and issue an order declaring Annexure-IV as illegal in so far as the applicants' claim for being included in the list of candidates to fill up the vacancies of Khalasis under the third respondent were not considered;
- b) to direct that Annexure-IV should be suitably modified by including the names of the applicants if necessary, by holding a selection,
- c) direct that applicants are liable not to be disturbed from the position held by them, and ..."

2. Respondents have filed a statement and also a counter affidavit denying all the allegations in the O.A.

3. In the course of the arguments, the learned counsel for the applicant submitted that the Railway had violated the directions issued by this Tribunal in O.A. 613/89.

Annexure-IV is the select list of casual mazdoors who have

volunteered for absorption as regular khalasis in the de-casualisation vacancies. According to the applicants, there were 25 residuary vacancies of regular khalasis after exhausting absorption of causl mazdoors, for being filled up with persons like the applicants who are working as Khalasis even though they had been screened and empanelled as Gangmen.

4. In the statement filed by the respondents, they have admitted that the 25 residuary vacancies of regular khalasis were existing after exhausting the absorption of casual khalasis as directed by this Tribunal in O.A. 613/89. But this was filled up with gangmen who were screened and enlisted in the year 1989. The applicants are persons who have been screened and enlisted as gangman in the year 1988, and they cannot seek any right in preference to persons who have been enlisted in the year 1989.

5. In the counter affidavit, the respondents have further explained position and submitted that there are about 350 vacancies of regular group-D staff to be filled from amongst casual mazdoors in the Engineering Department in the Palghat Division in the year 1989. This include 203 vacancies of regular khalasis which arose consequent on the de-casualisation of the posts of casual labours. The practice which was followed by the Railway till 1989 was to initiate steps for filling up of the 350 regular group-D vacancies from amongst the casual labourers in the Engineering Department. (the

casual mazdoors, gangman as also casual mazdoor khalasis) on the basis of their aggregate days of service as casual mazdoors. This practice was opposed by a large number of casual mazdoors out of which some of the persons ~~nowe~~ and connected cases ~~nowe~~ approached this Tribunal by filing O.A. 613/89/contending that the regular vacancies of Khalasis should be filled up from amongst the casual mazdoors instead of filling up of the vacancies by appointing gangmen. This Tribunal disposed of the application with some guidelines and observing that in the matter of filling up of the regular vacancies of khalasis arising due to de-casualisation, the casual mazdoors/ khalasis should be given preference and only after exhausting them the claims of gangmen should be considered. The operative portion of the judgment is extracted in Annexure-III.

It reads as follows:

- "a) The posts of Khalasis created under the de-casualisation schemes will, in the first instance be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation according to their aptitude test.
- b) The regular post of khalsis may be offered to such casual labourers in the Divisional seniority list who are waiting for regularisation. But if any casual labourers is not willing to be absorbed as khalsis it can be presumed that he is not interested and he cannot later claim any higher seniority over any of his juniors who have accepted the post of Khalasi and thus got regularised from an earlier date. All casual labourers should be warned in advance about this.
- c) If on this basis, it is found that there still remain vacancies of Khalasis created in connection with the decasualisation scheme, these vacant posts can be filled up as a residuary measure by calling volunteers from regular Gangman and by conducting aptitude test among them.
- d) The inter se seniority as between the casual labourer appointed as regular khalasis and regular Gangman appointed as regular Khalasis shall be determined from the date from which the persons were first regularised as khalasis.

e) This order however will not apply to the filling up of normal vacancies of Khalasis which arise due to retirement promotion, death etc. of the regular incumbent. Such vacancies can be filled up by the respondents by calling for volunteers from regular Gangmen. "The Gangmen so interested will count their seniority from the date they were absorbed as Khalasis."

6. According to the Railway, the Tribunal has given first option to all casual labourers due for screening on the basis of seniority, so as to be absorbed in the regular vacancies of khalasis. Gangmen are to be considered only after exhausting all such casual mazdoors as indicated therein. The direction in the aforesaid judgment came in and ¹⁹⁸⁹ is only applicable to casual mazdoors who are to be considered in connection with the 1989 screening and filling up of vacancies including 350 de-casualisation vacancies. It is to implement the aforesaid direction in the judgment that the Railway had issued Annexure-IV. All the persons included in Annexure-IV were casual mazdoors screened in the year 1989. The vacancies which arose after the filing of the aforesaid O.A. 613/89 were estimated to be 193 and they were filled up by casual mazdoors screened in the year 1989 who have volunteered on getting information of the decision of the Tribunal in O.A. 613/89. Twenty posts which remained after exhausting the absorption of the casual mazdoors were vacancies of Drainage Gangmen under the Inspector of Works. They were also filled up by calling volunteers from regular gangmen since there were not enough volunteers from the list of persons who were screened and empanelled for absorption in the year 1989. The applicants

were screened as gangmen and enlisted in the year 1989 as per Annexure-I. They have not/sponsored for the post of Drainage Gangmen. Hence, all the 203 de-casualisation vacancies have been filled up strictly in accordance with the direction of the Tribunal in O.A. 613/89. There are no more vacancies for absorption of the applicants.

7. Even though from the statements and the counter affidavit filed by the respondents there is an admission that about 20 vacancies were existing after exhausting the absorption of the casual mazdoor khalasis, as directed by the Tribunal in O.A. 613/89., the applicants cannot stake their claim to those posts when persons screened and enlisted in the year 1989 were remaining for regular absorption. The respondents have stated the 20 vacancies were those ^{of} Drainage Gangmen under the Inspector of Works and the applicants have not volunteered for the said posts. Even though they have stated that they have volunteered and ^{produced} Annexure-II to substantiate their cases, they have not denied the statement in the counter affidavit that the applicants have not volunteered for the post of Drainage Gangmen by filing a rejoinder. Apart from that, the explanation that is given by the Railway for giving preference to Gangmen who were in the 1989 list can be accepted on the facts and circumstances of the case, particularly when it has not been made clear by the Tribunal in the judgment in O.A. 613/89 that the Gangmen of a particular year is to be preferred in the matter

absorption as per guidelines mentioned in the judgment.

8. In the result, having regard to the facts and circumstances of the case, we are of the view that the explanation given by the Railways are acceptable and there is no injustice caused to the applicants as contended by them.

xxxxxxxxxx. This application is only to be rejected.

Accordingly, we dismiss the same.

9. There will be no order as to costs.

N. Dharmadan
(N. DHARMADAN)
JUDICIAL MEMBER

20.3.92

S. P. Mukerji
(S. P. MUKERJI)
VICE CHAIRMAN

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