

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 312 1991

DATE OF DECISION 13.2.92

K. Thankappan & 4 others Applicant (s)

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

Versus

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

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM :

(CR 1-2)

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? *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. N. DHARMADAN, JUDICIAL MEMBER

Annexure-I order of empanelment of Respondents

3 to 9 as regular skilled artisan under the 25% quota is challenged by the applicants on the ground that these vacancies were existing from 1979 and they were lying vacant till 1990 and now filled up ignoring the legitimate claim of the applicants.

2. According to the applicant, they were working as skilled labours and their service particulars have been given as follows:

| Name | Date of initial engagement in skilled | Date of temporary status | Date of empanelment order as gangman |
|-------------------|---------------------------------------|--------------------------|--------------------------------------|
| Thankappan K. | 3/75 | 23.10.78 | 24.3.87 |
| K. Gopalakrishnan | 6.2.75 | -do- | 14.12.87 |

| Name | Date of initial engagement in skilled | Date of temporary status | Date of empanelment order as gangman |
|--------------------------|---------------------------------------|--------------------------|--------------------------------------|
| N. Gopalakrishnan Achari | 9.10.75 | 23.2.79 | 14.12.87 |
| M. Muraleedharan | 5.9.81 | 22.6.82 | 23.1.89 |
| Ponnappan Achari | 1981 | 3.1.83 | 27.2.89 |

2. Even though they were empanelled and taken as Gangman, they were not relieved from the duties so as to join in the Gang and work as Gangman. Accordingly, they were seniors to respondents 3 to 9 and entitled to be included in Annexure-I in preference to respondents 3 to 9.

3. The respondents have filed a detailed reply statement denying the allegations and averments in the application. Similarly, the applicants also filed rejoinder producing additional documents and contended that they are persons who are continuing as skilled artisans entitled to be absorbed in the regular post in preference to the respondents.

4. We have heard the arguments. The learned counsel for the applicants, Shri P. Sivan Pillai, vehemently submitted that though orders had been passed posting them as Gangman, they never joined duties as Gangman. In order to support this contention, he has brought our attention to Annexures A-3 and A-5 series. These documents indicate that these ~~by~~ applicants were ~~not posted~~ ^{designated to} as Gangman but given duties of the skilled artisans. Nevertheless, the applicants have been

drawing pay of Gangman and they were enjoying other benefits ^{regular} as Gangman. They never protested against their postings or the designation as Gangman and abstained from receiving ^{the} emoluments due to the Gangman. These facts will indicate that the applicants were willing to be categorised as Gangman.

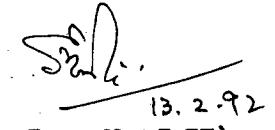
Now when the Annexure-I order has been passed, they want to be taken against 25% quota in preference to casual labourers ^{posting as} who were working as Khalasis without opting for Gangman, even facing the risk of termination.

5. In the circumstances, the orders posting the respondents 3 to 9 cannot be faulted because ^{regular} those persons did not at any time offered to be posted as Gangman and sought their line of promotion in that particular channel. On the other hand, the applicants wanted to get their earlier absorption in the service as Gangman and subsequently when a chance arose in a different channel, they wanted to get that benefit of promotion. They cannot be allowed to get the best of both worlds. This cannot be allowed. Applicants' contention based on Annexure-VI cannot be accepted at this stage because the applicants are estopped from raising all these contentions.

6. In this view of the matter, we see no merit in the application. It is only to be dismissed. Accordingly, we dismiss the same. There will be no order as to costs.


13.2.92

(N. DHARMADAN)
JUDICIAL MEMBER


13.2.92

(S. P. MUKERJI)
VICE CHAIRMAN