

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.316/2001.

Friday this the 3rd day of August 2001.

CORAM:

HON'BLE MR. A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

P.Raghavan,
Depot Store Keeper, Construction,
Southern Railway, Ernakulam. .. Applicant

(By Advocate Shri T.C.G.Swamy)

Vs.

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

(By Advocate Mrs.Sumathi Dandapani)

The application having been heard on 3rd August 2001
the Tribunal on the same day delivered the following:

O R D E R

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

The applicant initially joined service as casual
labourer in the Construction Department of the Southern Railway
and was granted temporary status with effect from 1.1.84. He
was, by order dated 10.3.97 (A2) absorbed as Khalasi but
allowed to continue in the construction Organisation. By order
dated 22.5.1997(A3) he was posted to work under the 3rd
respondent, Executive Engineer. The present grievance of the
applicant is that he has been repatriated to open line by the



impugned order A-1 dated 20.12.2000. Aggrieved by this, the applicant has filed O.A.12/2001 which was disposed of on an agreement of the parties, permitting the applicant to make a representation to the Chief Engineer, Construction, Southern Railway, Chennai and directing the Chief Engineer that, if such a representation is received the same should be considered and disposed of with appropriate orders, keeping the relief of the applicant pending. Purusant to the above direction, the applicant made a representation(A7) which has now been rejected by the 2nd respondent by order dated 9.3.2001(A8). Aggrieved by that, the applicant has filed this application seeking to have the impugned orders A-1 and A8 set aside with consequential benefits.

2. It has been alleged in the application that in the event of curtailment of strength in the Construction Organisation, as per the guidelines issued by the Chief Personnel Officer, Southern Railway, Headquarters Office Personnel Branch, Madras-3 vide letter dated 26.3.96, repatriation is to be made in the reverse order of preference in deputation and that therefore, the repatriation of the applicant retaining one Shri Narayanan Elayath, K.S.Gokulan, P.V.Pouly, M.Rajan, Mohan and many others who were juniors to the applicant in the Construction Organisation and working as Khalasis, is arbitrary, irrational and unjustified. It has further been alleged in the application that when a set of Khalasis were repatriated to the Trivandrum Division, the Senior Divisional Personnel Officer, Trivandrum had on 29.1.2001 addressed the Assistant Executive Engineer, Quilon

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stating that there was no vacancy of Khalasi to accommodate those employees and they should be taken back in the Construction Unit and that the Executive Engineer Construction in the Ernakulam Junction as on 31.1.2001 has issued A-10 order directing the Senior Section Engineer that the Group 'D' employees who had been relieved to carry out their transfer to TVC might be taken back duly maintaining a temporary register and that therefore, the repatriation of the applicant to Trivandrum division as Khalasi was not in public interest. With these allegations the applicant has filed this application for the reliefs as aforesaid.

3. Respondents in their reply statement contend that the applicant has been regularly absorbed in the open line where he has been provided a lien and that, as there was no requirement of Khalasi when the vacancy of Khalasis in the Construction Wing was reduced the respondents decided to repatriate them to the parent units. The Construction Unit is a temporary organisation. The retention of four persons named in the O.A. is sought to be justified on the ground that they are Gangman and belong to entirely different seniority unit, while the applicant is a Khalasi and service of Khalasi is required in Trivandrum Division, where a Gangman cannot be accommodated.

4. We have carefully gone through the pleadings and other materials placed on record. We have heard the learned counsel on either side. The case of the applicant is that, he belongs to the Construction Organisation and therefore, the impugned order repatriating him to open line cannot be sustained

because, from A-2 itself it is seen that the applicant has been absorbed in the open line and has been provided a lien. Applicant who belongs to the open line does not have any indefeasible right to continue in the Construction Organisation if the Construction Organisation has no place to accommodate him. However, when repatriation is effected in the construction organisation, the same should be made on the basis of a rational principle which should be the "last come first go". Guidelines in this regard has been provided in the letter of the Chief Engineer, Construction, Southern Railway, Chennai(A9) which also states that the repatriation should be in the reverse order of preference in deputation.

5. The case of the applicant that four persons who have been named in the application namely Narayanan Elayath, Gokulan, Pouly, Rajan are juniors to the applicant in the Construction Wing as Khalasis, is not disputed by the respondents in the reply statement. The respondents contend that they are Gangman, and therefore, they belong to an entirely different seniority unit, and that the applicant, a Khalasi, cannot compare himself with them for the purpose of seniority. We find no force in this argument. In deciding the question of repatriation on the ground of surplusage, the seniority in the Construction Organisation should be the criteria and not the seniority in the parent department of each of the deputationists because such a practice alone will fit in with the policy of last come first go. The applicant as also the four persons above named, juniors to the applicant, are performing the identical duties as Khalasis in the Construction

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Organisation and if repatriation becomes necessary, it is the juniormost who should first move. In that view of the matter, we find substance in the argument of the applicant that, the repatriation of the applicant while four persons who are juniors to him in the Construction organisation are retained as Khalasies is arbitrary and discriminatory. We also find that when a set of Khalasis were repatriated to Trivandrum Division on the ground of surplusage in the Constructin Wing, the Divisional Personnel Officer Trivandrum wrote a letter dated 29.1.01(A-9) stating that there was no vacancy in the category of Khalasi in the Engineering Department with medical classification either in B-I category or in C-I category for accommodating the employees. The contention of the respondents that the service of the applicant, as Khalasi, is required in the Trivandrum Division does not appears to be true or correct in the light of what is stated in Annexure A9 letter dated 29.1.01.

6. Learned counsel of the respondents invited our attention to a ruling of this Bench in O.A.3/2001 wherein the retention of junior was not interfered with. That was the case in which the applicant a Khalasi was repatriated while Gangman were retained. It was not clear from the order whether those Gangmen were working in Construction Organisation as Khalasis or as Gangmen . On a reading of the order in O.A.3/2001 it would appear that those who were retained in the Construction Organisation were Gangmen. At least the understanding of the Bench in that case was that those who were retained, were

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working as Gangman in the Construction Organisation. In this case we find that four persons who are juniors and working as Khalasis in the Construction unit are retained in the Construction Organisation while the applicant has been repatriated. We find discrimination against the applicant.

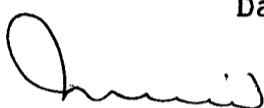
7. Learned counsel of the respondents next invited our attention to a decision of this Bench of the Tribunal in O.A.1351/00 wherein it was observed that the guidelines contained in the letter of the Headquarters Office, Personnel Branch, Madras dated 26.3.1976 (A3) in that case, which is A-4 in this case, would not have any statutory force. We have no difference in view regarding the fact that A-4 does not have any statutory force, although we hold the view that guidelines are meant to be followed and not to be ignored totally or violated. However, when repatriation on the ground of surplusage is being made, we are of the considered view that a rational principle should be followed, i.e., if curtailment in cadre is there, those who should be sent back should be the juniormost in the cadre where the surplusage has occurred. In this case, the surplusage has occurred in the Construction Wing. Therefore, the seniority which is germane for consideration is the seniority in the Construction Wing and not in the parental cadre. Therefore, we find no justification at all in choosing the applicant for repatriation to his parent cadre while at least four of his juniors also working as Khalasis were retained. This according to us is a pick and choose principle

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which is arbitrary, discriminatory and opposed to the equality provisions enshrined in Article 14 of the Constitution.

8. In the light of what is stated above, the impugned order A-1 to the extent it repatriates the applicant to Trivandrum Division while retaining juniors of the applicant, is set aside and the impugned order A-8 is also set aside. The applicant shall be allowed to continue in the Construction Organisation so long as any one junior to him in the Construction Organisation is retained. No costs.

Dated the 3rd August, 2001.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred to in the order:

A-1: True copy of the Order No.C/49/2000 dated 20.12.2000.

A-2: True copy of the order No.V/P 564/I/Emp/TVC/vol.5 of 10.3.97, issued by the 4th respondent.

A-3: True copy of the enclosure to office memo No.P.135/I/W.C.Sanctions/Absorption of Casual Labourers/CN dated 22.5.97.

A-4: True copy of the order No.P(S)676/I/5/Surplus/Vol.IV dated 26.3.76, issued by the Chief Personnel Officer, Southern Railway Madras issued on behalf of the 2nd respondent.

A-8: True copy of the order No.P.363/I/CN/MS/Law/925 dated 9.3.2001.

A-9: True copy of the letter bearing No.V/P 536/I/Vol. V dated 29.1.2001 issued by the Divisional Personnel Officer, southern Railway, Trivandrum.

A-10: True copy of the letter No. P 676/CN/ERS dated 31st January,2001 issued by the Executive Engineer, Construction, Ernakulam.