

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 322 of 2002
OA No. 658 of 2003
and
OA No. 659 of 2003

Friday, this the 17th day of December, 2004

CORAM

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER
HON'BLE MR. A.K. BHATT, ADMINISTRATIVE MEMBER

OA No. 322 of 2002

1. K.N. Sivasankara Kurup,
S/o late Narayana Kurup,
Khalasi Helper Grade I (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20
2. K.P. Babu,
S/o K.G. Pappachan,
Khalasi Helper Grade I (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20
3. N.V. Dileep Kumar,
S/o N. Vasu,
Khalasi Helper Grade I (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20
4. G. Madhavan,
S/o Gangaraja,
Khalasi Helper Grade II (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20
5. V. Kumar,
S/o late Vasudevan,
Khalasi Helper Grade II (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20
6. K.V. Philipose,
S/o Ouseph Varkey,
Khalasi Helper Grade II (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20
7. K.K. Parameswaran,
S/o Kesavan,
Khalasi Helper Grade I (Electrical),

Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20

....Applicants

[By Advocate Shri P.K. Madhusoodhanan]

Versus

1. The Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram.

2. Union of India, represented by its
Secretary to Ministry of Railways,
Rail Bhavan, New Delhi.

....Respondents

[By Advocate Shri P. Haridas]

OA No. 658 of 2003

1. P. Manikandan,
S/o P. Gopalan Nair,
Helper II/Electrical Train Lighting,
Southern Railway,
Ernakulam Marshalling Yard,
Kochi-20

....Applicant

[By Advocate Shri P.K. Madhusoodhanan]

Versus

1. The Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram-14

2. Union of India, represented by its
Secretary to Ministry of Railways,
Railway Board, Rail Bhavan,
New Delhi.

....Respondents

[By Advocate Shri Sunil Jose]

OA No. 659 of 2003

1. K.N. Sivasankara Kurup,
S/o late Narayana Kurup,
Khalasi Helper Grade I (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20

2. K.P. Babu,
S/o K.G. Pappachan,
Khalasi Helper Grade I (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20

3. G. Madhavan,
S/o Gangaraja,
Khalasi Helper Grade II (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20

4. V. Kumar,
S/o late Vasudevan,
Khalasi Helper Grade II (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20

5. K.V. Philipose,
S/o Ouseph Varkey,
Khalasi Helper Grade II (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20

6. K.K. Parameswaran,
S/o Kesavan,
Fitter Grade-III (Electrical),
Train Lighting, Ernakulam Marshalling
Yard (Coaching), Southern Railway,
Kochi-20

....Applicants

[By Advocate Shri P.K. Madhusoodhanan]

Versus

1. The Senior Divisional Personnel Officer,
Southern Railway,
Thiruvananthapuram.

2. The Chief Personnel Officer,
Southern Railway, Head Quarters Office,
Park Town, Chennai-3

3. Union of India, rep. by its Secretary
to Ministry of Railways, Railway Board,
Rail Bhavan, New Delhi.

4. G. Madhusoodhanan,
Helper-II (AC), Southern Railway,
Alappuzha.

....Respondents

[By Advocate Shri P. Haridas (R1 to R3)]

The applications having been heard on 16-12-2004, the
Tribunal delivered the following on 17-12-2004:

O R D E R

HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

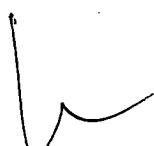
All the three cases namely OA.No.322/2002,
OA.No.658/2003 and OA.No.659/2003 are connected, identical and
inter-linked and therefore a common order is being passed,
since the issue is one and the same. All applicants in
OA.No.322/2002 are the applicants in OA.No.659/2003 also.



2. All the applicants are Khalasi Helpers Grade I, II and III in the Electrical Department of the Trivandrum Division of Southern Railway. The 6th applicant in OA.No.659/2003, who is in Fitter Grade-III, is willing to forgo his promotion of Technician Grade-III and repay the benefits he received if he has been considered and appointed to the post of AC Khalasi Helper-II (AC) in AC Wing. All the applicants have the educational qualification of Pass in VIIIth standard. The Electrical Department of Southern Railway consists of Train Lighting, Power and Air Conditioning (AC for short) and the method of filling up of the vacancies of Helper Grade-II (AC) is by calling volunteers from Khalasi Helpers Grade-II and I of the Divisional Unit considering their suitability and aptitude to work in AC side, as per Annexure A7 avenue chart. For Group "D" posts in Railways originally literacy alone was prescribed by the relevant provisions in the Indian Railway Establishment Manual, Volume I. However, the 2nd respondent had insisted matriculation while absorbing Group 'D' staff into the post of AC Khalasi in AC Wing. But, after deliberations at various levels, the Railway had prescribed a minimum educational qualification for recruitment to Group D posts in Railways as class VIII passed by its order dated 4-12-1998 (Annexure A8). The action prescribing a higher qualification by the official respondents in supersession of Annexure A8 order of the Railway Board is discriminatory. In Chennai Division, as per Annexure A9 and A-10, employees were absorbed in AC Wing with VIIIth standard in view of the relaxation of qualification in Annexure A8. But, as per Annexure A-13, the official respondents prescribing the educational qualification as SSLC has called volunteers from Group D Electrical Train Lighting/Power staff to submit their applications for filling up of 65 vacancies of Khalasis in AC wing. Though the applicants are not qualified, they all applied for the post and made representation also to

consider their case. Out of the 15 employees who was volunteered, 14 were absorbed and subsequently the remaining were also absorbed with total disregard to the claim of the applicants. It is contended that the 1st respondent is not competent to stipulate SSLC pass as minimum qualification for consideration for selection, absorption and appointment to the post of AC Khalasis in view of Rules 123 and 124 of the Indian Railway Establishment Code, Volume I (1985 Edition). Aggrieved by the said inaction, the applicants have filed OA.No.322/2002 for consideration of the applicants therein to the vacancies of AC Khalasis in Trivandrum Division. The official respondents have considered, but these people alone were not selected on the basis of the qualification. Aggrieved by the non-consideration and non-selection, the applicants have filed these OAs seeking similar reliefs as under:

- (a) set aside the impugned orders in so far as it prescribes the educational qualification of "10th pass" as the required minimum educational qualification for submission of application for consideration for the post of Helper II (AC) in Trivandrum Division;
- (b) set aside the impugned orders in so far as it includes the 4th respondent and do not include and it excludes the applicants in the list dated 31-10-2002;
- (c) set aside Annexure A-21;
- (d) issue necessary directions to the respondents to consider the applicants afresh against the to untrammeled by the stipulation of SSLC pass therein and decision taken in Annexure A-19 and A-21 upholding that the educational qualification prescribed in Annexure A8 be followed in considering the employees for absorption/lateral induction/recruitment to the post of Helper II (AC)/Khalasi II (AC) notified in Annexure A-16 in the Trivandrum Division of the Southern Railway;
- (e) declare that the applicants are entitled to be considered for Helper II (AC) post despite the fact that they are having only the educational qualification of VIIth standard; and
- (f) declare that the insistence of pass in SSLC/Matriculation for the said post is illegal, arbitrary and discriminatory.



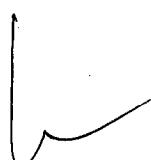
3. The official respondents have filed a detailed reply statement in all these matters separately. They contend that OA.No.322/2002 while pending, the other OAs are filed for the same relief. As per the orders of this Tribunal, the applicants were considered and their claims were rejected pending disposal of the said OAs. Therefore, the applicants have no locus standi to file the other OAs on the same issue seeking eligibility on the basis of VIII standard pass and volunteering is unwarranted. The SSLC has been prescribed as the minimum educational qualification for the post of AC Khalasi. The order issued by the Chief Personnel Officer dated 21-12-1995 and the letter dated 5-12-2001 (Annexure R1 and R2 respectively) prescribe SSLC as the minimum educational qualification for the said post. Annexure A-11 said to have been issued by the Madras Division cannot be considered for Trivandrum Division for such selection and the Court's decisions have upheld the prescription of educational qualification as SSLC in such matters earlier, which has become final. The 6th applicant in OA.No.659/2003 is not eligible for being considered for such selection in any way, since he is working in a higher scale than the scale from which the applications have been invited. Volunteers who have passed 10th standard only have been called for as per Annexure A-24 and passing of VIIIth standard is of no use to them in the matter. On the basis of the provisions contained in the Railway Establishment Manual and Railway Board letter dated 16-8-1985 (Annexure A8), it is in respect of direct recruitment, whereas the proceedings initiated as per Annexure A-24 are as lateral induction of Group D employees of Electrical Department. Therefore, Annexure A8 is not applicable to the issue involved in these OAs. In terms of the Chief Personnel Officer's letter dated 19-8-1985 (Annexure R7),



the question of prescribing the minimum educational qualification of SSLC was fixed which was reiterated by Annexure R8 order, which states that it should be ensured that under no circumstances should Khalasis not possessing the qualification of SSLC be posted as AC Khalasis even on adhoc basis. There is no flaw in the finding of the selection and procedure prescribed thereof and therefore there is no merit in the OAs.

4. Applicants have filed a rejoinder reiterating the contentions in the OA and further contending that no proper recruitment rules have been framed for the post of AC Khalasis by the General Manager of Southern Railway who alone can be issued orders in accordance with Section 124 of the Indian Railway Establishment Code Volume-I under Chapter No.I. Annexure R1 is only an administrative instruction of the 2nd respondent which cannot take the place of a recruitment rule nor can it be considered so even if it is approved by the General Manager. The OA referred in the reply statement filed in OA.No.1418/98 pertains to an applicant who has only VIth standard pass as his educational qualification and on that basis that OA was disposed of. In the order in OP.No.27658/2001 dated 5-11-2001, the Hon'ble High Court had no opportunity to call upon to consider the scope and validity of Annexure A8. Therefore, the question of res judicata does not arise.

5. We have heard Shri P.K.Madhusoodhanan, learned counsel for the applicants, Shri P.Haridas and Shri Sunil Jose for respondents.

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6. Learned counsel had taken us to various pleadings, materials and evidences placed on record. Counsel for the applicants vehemently argued that the Railway Board has ordered to be "class Eight passed" as the qualification for the post and any supersession by the lower authority is without any legal sanction. Therefore, the prescription of higher qualification of SSLC pass is opposed to law, perverse and illegal. The executive instructions quoted by the respondents offend the statutory rules and the Railway Board's orders cannot be given a goby. Learned counsel for the official respondents, on the other hand, persuasively argued that since these staff have to deal with number of disciplines in addition to refrigeration, it has been decided that only such of those volunteers possess the minimum educational qualification of SSLC/Matriculation should be considered for the post of Khalasi Helper in the AC Wing.

7. We have heard the learned counsel for the respective parties. The question involved in this case is that the educational qualification prescribed for Group D posts as SSLC is justified or not. Learned counsel for the applicants brought to our notice the instructions regarding the qualification for recruitment to Group D posts in the Railways issued by the Railway Board dated 4-12-1998, which reads as follows:-

"... Attention is invited to Board's marginally quoted letters issued from time to time regarding the minimum educational qualification for recruitment to Group D posts on the Railways.

The revision of the minimum educational qualification for recruitment to Group D posts on the Railways has been under consideration of the Board for sometime.

Board after carefully considering the matter have decided that in supersession of all previous instructions on the subject, the minimum education qualification for recruitment to Group D posts in



scales Rs.2550-3200 (RSRI)/Rs.2610-3540 (RSRP) on the Railways, irrespective of the category or trade or Department etc. will henceforth be Class Eight passed.

Necessary ACS to IREM-Vol.I 1989 edition will follow.

Please acknowledge receipt. . . ."

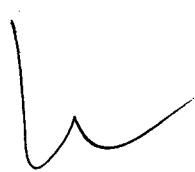
8. Learned counsel for the official respondents further contended that this was reiterated in Annexure A9 order dated 24-11-1999 with special reference to AC Khalasis, where the DRM's Office has written letter to the CEE/Madras stating that:

"... As the educational qualification has been relaxed to VIII std passed, kindly advise whether the suitability test could be conducted for the staff concerned as advised by Sr.DPO/MAS. As the Organised Labour is urging for filling up of the vacancies of AC Khalasis, an early reply is requested . . ."

9. The above was followed by a clarification by the DRM's office dated 10-8-2001 (Annexure A-11) stating that pass in VIIIt standard is the qualification for such post. Annexure A-12 also confirms the said proposition. These orders are with reference to the orders and clarifications issued by the Chennai Division, whereas for the same post when it came to the Trivandrum division, Annexure A-13 and other impugned orders prescribe that a Matriculation/SSLC must be qualified for such posts. The applicants have been discriminated in not considering them for such vacancies which is impugned herein. Annexure A-13 issued by the Sr.DPO, Trivandrum Division prescribes the qualification of 10th standard pass to fill up that vacancies. Now, admittedly, Chennai Division of Southern Railway is following a qualification of VIIIt standard pass for consideration to such posts, whereas the Trivandrum Division of Southern Railway under the same Headquarters/umbrella is prescribing a different qualification by the divisional authorities. Both the counsel have relied on Rule 123 and 124 of the Indian Railway Establishment Code,



Volume-I and contended that the Rule 123 prescribes that the Railway Board has full powers to make rules with regard to the railway servants under their control and that the Rule 124 prescribes that the General Manager of Indian Railway alone has power to make rules with regard to the Railway servants in Group C and D under their control provided they are not inconsistent with any rule made by the President or the Ministry of Railways. Therefore, these rules are very clear that ultimate powers is vested with the Board which represent the Ministry and the General Manager can do it provided it is not inconsistent with any rule made by the Ministry/Board. In this perspective, when we analyse Annexure A8, we find that it is issued by the Railway Board on behalf of the Ministry prescribing the qualification for Group C and D posts as "class Eight passed". This is followed by the Chennai Division consistently, whereas the Trivandrum Division of the Railways had taken a different turn and declared that SSLC should be the minimum qualification. On going through the rules position as mentioned above, we are of the view that it is the intention of the Central Government that as far as possible there should be an uniform pattern of qualification and discipline in all Railways. Therefore the Railway Board has been given statutory powers to prescribe qualification. Though Rule 124 gives a power to the General Manager to relax the rule according to the requirement in a particular railway, it is made clear that it is not inconsistent with Ministry/Board's instructions. When the matter is viewed in that perspective, we find that the impugned orders are inconsistent with Annexure A8 order and no proper explanation is given by the official respondents why such a decision has been taken. The nexus for which such relaxation is granted will not justify the objectives to be achieved. In this context, it is brought to our notice the decision of the Apex court in Union of India vs. Sudheer Kumar



Jaiswal reported in (1994) 4 SCC 212, declaring that the Railway Board's orders on recruitment rules have statutory force and cannot be changed or modified or annulled by administrative instructions or executive orders by a lower authority. It is clear that by virtue of the impugned orders the Trivandrum Division is taking a deviation in supersession of Annexure A8 order of the Board which prescribes VIIIth standard as qualification for the disputed posts. Therefore, we are of the view that these impugned orders are issued not in true spirit of law and rules.

10. Apart from that it is also submitted that there is also direct recruitment to the said post where the qualification is prescribed as VIIIth standard. When VIIIth standard is prescribed as the qualification for direct recruits, why a different stand is taken in the case of promotees is not explained nor given any proper reasoning. Therefore, it appears that this enhanced qualification has been prescribed by the impugned orders as 10th standard pass is for reasons best known to the official respondents. Therefore, we are of the view that the impugned orders prescribing the qualification as SSLC for the said post is not in tune with the terms of the recruitment rules and orders of the Railway Board. Therefore, these orders would not stand in its legs.

11. However, we are not inclined to set aside the impugned orders as such for the reason that almost similar issue, ⁴ ~~not~~ ~~very~~ identical, was considered in OA.No.249/91 and OA.No.583/91 by this Tribunal and passed the following orders:-

".. Having regard to the facts and circumstances of this case, the selection made by the Railways for the post of AC Khalasi fixing the minimum educational qualification and experience is with due authority and the operation of the order of Annexure-A1 dated 16-8-1985 being relevant only to initial direct



recruitment, whether it is stayed by virtue of Annexure-A8 series or not, has no consequence so far as the authority and validity of the impugned orders at Annexure-A5 and A6 are concerned. These impugned orders passed on proper administrative authority and judgment cannot be faulted as they are not related to initial direct recruitment of AC Khalasis."

12. Further, by Annexure R3 order in OP.No.27658/2001-S dated 5th November, 2001, the Hon'ble High Court has passed the following orders:-

"Heard counsel on either side. We find no infirmity in the order of the Tribunal to be interfered with in this writ petition. Petitioner has approached the Tribunal seeking to quash Ext.P9 order and for a declaration that he is entitled to be considered for selection in the suitability test for absorption to the post of AC Khalasis. Evidently going by the order issued by the administration, SSLC is the prescribed qualification. Petitioner does not possess SSLC. Counsel for the petitioner submitted that persons who are not having SSLC has given due promotion to the post of AC Khalasis. Reference was also made to the case of one Sasi, Surendran, Gangadharan etc. As things stand, going by the executive orders issued by the administration, we find no infirmity in the order of the Tribunal. Going by the qualification laid down, if petitioner has got any grievance he may make suitable representation before the administration in the event of which, the same would be considered and appropriate orders would be passed."

13. Though the applicants' counsel contended that the issue involved is different in these matters, on perusal of the pleadings and materials on record and on reading of the said orders we find that it was identical and similar and pertaining to the post of AC Khalasis and the qualification thereof and the Hon'ble High Court upheld the prescription of qualification for these posts as SSLC. Considering the said orders, we are constrained to grant any relief to the applicants as such in view of the decision of the Hon'ble High Court mentioned above.

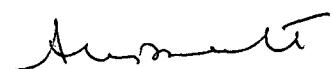
14. However, we direct the Secretary, Railway Board, in consultation with the Board/Chairman, to take a decision as far as possible uniformly applicable to all railways and settle the issue once for all and pass appropriate orders/instructions

..13..

within a period of six months from the date of receipt of a copy of this order bearing the above observations in mind and based on such orders, the official respondents in these cases shall take appropriate decision in the case of the applicants and communicate the same to all of them.

15. The Original Applications are disposed of as above. In the circumstances, no order to costs.

Friday, this the 17th day of December, 2004



A.K. BHATT
ADMINISTRATIVE MEMBER



K.V. SACHIDANANDAN
JUDICIAL MEMBER