

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

O. A. No.
~~XXXXXX~~

3347

199 0

DATE OF DECISION 29.10.90

P.I. Padmanabhan and 13 others Applicant (s)

Mr. V. R. Ramachandran Nair

Advocate for the Applicant (s)

Versus

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

M/s. M.C. Cherian &

Advocate for the Respondent (s)

Saramma Cherian

CORAM:

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

The Hon'ble Mr. A.V. HARIDASAN, 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? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

HON'BLE SHRI S.P. MUKERJI, VICE CHAIRMAN

In this application dated 23.4.1990 filed under Section 19 of the Administrative Tribunals Act, the fourteen applicants, who have been working as casual Electrical Khalasis in the Electrical Engineering (Construction) Division under the Divisional Electrical Engineer (Construction), Southern Railway, Ernakulam, have prayed that the impugned notification dated 23.3.90 at Annexure-D and the circular dated 29.3.90 at Annexure-E inviting volunteers from casual labour with temporary status for redeployment in the Electrical Construction Branch in Madras, Madurai and Trivandrum Divisions and prescribing a minimum qualification of S.S.L.C pass with desirable additional technical qualifications along with some other conditions, should be set aside and that the respondents be directed to absorb the

applicants, who are already working as Electrical Khalasis in the Electrical Division. They have also prayed that it should be declared that the applicants have superior ^a claim for being absorbed on/regular basis in the Electrical Division and that the prescription of a minimum qualification of S.S.L.C for posting as Electrical Khalasi should be declared as illegal and violative of Articles 14, 16 and 21 of the Constitution. The brief material facts of the case are as follows.

2. According to the applicants they were initially appointed as casual khalasis under the Executive Engineer (Construction), Trichur in connection with the doubling work of Shoranur-Ernakulam line during 1979/80. They were given the regular pay scale with effect from 1.1.84. On completion of the project, some of the applicants were transferred under Executive Engineer (Construction) of Trivandrum Division and some continued in the Construction Division at Trichur itself. Subsequently during 1988, all the applicants had been transferred to the Electrical Division. The applicants have been keen that they are permanently absorbed against regular vacancies of Electrical Khalasis in the Electrical Division. They were, therefore, surprised when the Divisional Electrical Engineer (Construction) at Ernakulam called for volunteers of various units by a notice dated 26.7.89 from the casual staff ^{for} redeployment in the Electrical Branch ignoring the claims of the applicants. They moved this Tribunal against that notice in OA 564/89 ^{and} to direct the respondents to absorb the applicants as Electrical Khalasis. The respondents, in that case, filed an affidavit indicating that since the sanction of temporary posts of casual labour Khalasis ^{in the Electrical Division} could not be obtained from the General Manager, Southern Railway, the proposal

to have regular Electrical Khalasis in the Electrical Division through the notice had been dropped. Accordingly that application was closed by the Tribunal through its order dated 30th November, 1989 (Annexure-C) on the basis of the assurance that "when the sanction is obtained from the General Manager fresh notification will be issued for taking Casual Labourers for filling up the sanctioned posts and at that time the applicant can also make their claim in accordance with the conditions that may be fixed at that time". Fourteen of the seventeen applicants^{in that case} who had moved OA 564/89, have now moved this application before us, against another notice circulated at Annexures D and E again inviting volunteers for regular deployment as casual workers in the Electrical Construction Branch. In that circular a minimum educational qualification of S.S.L.C had been prescribed, which is not satisfied by a number of applicants before us. According to the applicants, the Electrical Khalasi is the lowest rung of Group D posts in the scale of Rs.750-940 and no educational qualification has been insisted upon to fill up such posts in any Division so far, including the Electrical Division. The work and duties of Casual Khalasis working as Electrical Khalasis and those of regular Electrical Khalasi are identical. They have referred to the Railway Board's order dated 4.9.86 (Annexure-F) and a further order dated 26.9.86 (Annexure-G), in which ~~the question~~ the question of finalising the minimum educational qualification for the posts of Khalasi has been kept pending and the revised minimum educational qualifications laid down in Board's letter of 16.8.1985 has been kept in abeyance. In the light of these orders of the Railway

22

Board, prescribing a minimum qualification of S.S.L.C for casual Electrical Khalasis has been termed as arbitrary and discriminatory. The applicants have argued that the respondents should have regularised the casual Khalasis working in the Electrical Division on the basis of seniority. Prescribing a minimum educational qualification is also in violation of the assurance given by the respondents before the Supreme Court to extend the benefit of regularisation to maximum number of casual employees. They have also argued that prescribing a minimum educational qualification and a preferential technical qualification of a Diploma takes away the vested right of casual Khalasis for regularisation.

Conceding that the railway authorities as employer are at liberty in law to frame the recruitment rules for each and every post, ^{the} applicants have urged that ^{the} since for Civil Khalasis, Mechanical Khalasis and Electrical Khalasis, all in the pay scale of Rs.750-940 ^{for} and the regular Khalasis, no educational qualification, had so far been prescribed, singling out the Electrical Khalasis alone and fixing a minimum educational qualification for them, is discriminatory.

In an additional affidavit dated 26th May, 1990, the fourteen applicants have stated that three of them have no educational qualifications, two have studied upto the 5th Standard, two upto the 6th Standard and seven of them have studied upto 7th or higher standard. None of them has passed the 10th Standard. In the counter affidavit, the 3rd respondent, who is the Divisional Electrical Engineer has stated that the office of the Divisional Electrical Engineer at Ernakulam was started only recently, whereas the offices of the Executive Engineers and Deputy Chief Engineers, Construction, at Ernakulam and Trichur have been functioning for a long time. A number of

22

casual workers have been working under the latter organisations and the Divisional Electrical Engineer, Ernakulam has been carrying out the works under them by engaging casual labourers on the rolls of the Executive Engineers and Deputy Chief Engineers of Construction Division at Ernakulam and Trivandrum. In 1989 there were 35 casual labourers working under the Divisional Electrical Engineer, fourteen of them had been taken on loan basis from the Executive Engineer/Deputy Chief Engineer, Trichur, and twenty one from the Executive Engineer/Deputy Chief Engineer, Ernakulam. These casual labour, though working under the third respondent in the Electrical Construction Division, ^{had} their lien and service records, seniority lists and wage bills ~~were~~ [✓] all maintained in their parent organisations. It has been further stated that the Executive Engineers/Deputy Chief Engineers as also the Divisional Electrical Engineers are all under the over-all control and supervision of the Chief Engineer(Construction) Southern Railway, Madras. The respondents have taken a policy decision to replace the casual workers taken on loan from other units in the Electrical Construction Division by engaging casual labourers independently. The proposal was not to have outsiders, but to confine the recruitment to volunteers from amongst casual workers with temporary status working in various units and branches under the Chief Engineer(Construction). It was also decided that the electrical equipment being of sophisticated nature, some minimum educational qualification is necessary. Accordingly, volunteers were called for by a circular dated 26.7.89 from amongst the casual workers who have passed 10th Standard. This circular was challenged by the fourteen applicants now before us and three others, in OA 564/89 before the

Tribunal. The application was disposed of by the order/ on the basis of the assurance given by the respondents that the applicants will also be considered in accordance with the conditions to be prescribed at the time when fresh notification will be issued. During the pendency of O.A 564/89 the fourteen casual labourers taken on loan basis from Trichur were reverted back to their parent units. Eight of them filed O.A 680/89 claiming retention in the Electrical Division. This application was dismissed by the Tribunal by its judgment dated 28.2.90 (Ext R-1A). Thus the casual labourers taken on loan basis from the Executive Engineer/Deputy Chief Engineer (Construction), Trichur have been sent back. The applicants are among the twenty one casual labourers taken from the Executive Engineer/Deputy Chief Engineer, Ernakulam on loan basis and are similarly situated as the fourteen casual workers from Trichur. The respondents have explained in pursuance of the policy to have regular casual workers in the Electrical Division, the circular dated 23.3.90 at Annexure-D was issued inviting volunteers from existing casual workers and prescribing S.S.L.C as the minimum educational qualification. The respondents, however, ^{have} indicated that the educational qualification of S.S.L.C prescribed in Annexure-D was later modified to 7th Standard. From amongst the casual labourers who volunteered in pursuance of Annexures D and E notices, "the Chief Engineer, Construction has chosen the senior-most suitable casual labourers with the prescribed minimum educational qualification, for being engaged under this respondent and similar other Divisional Electrical Engineers". Twenty one casual labourers so selected have been engaged and the remaining fourteen as screened remain to be engaged.

.7. that

The respondents has stated/the applicants who have been working in the Electrical Construction Division on loan basis cannot have any superior claim to be retained in the Electrical Division on a permanent basis. It is for the respondents to consider what minimum educational qualification should be prescribed, keeping in view the nature of work involved. Only/^{the}seniormost casual labourers with educational qualification of 7th Standard now working under the various Executive Engineers/Deputy Chief Engineers have been taken as casual labourers under the third respondent. In fact two of the casual labourers who had challenged the first circular dated 26.7.89 in O.A 680/89 have been selected for regular absorption as casual labourers. It has been argued that it would be dangerous to compromise ~~with~~[✓] quality and safety of electrical work by doing away/[✓]with the minimum educational qualifications. [✓]

3. In the rejoinder the applicants have stated that casual labour cannot be taken on loan, deployed or redeployed like the regular staff. There is nothing to show that they had been taken on loan. They have argued that in accordance with the Indian Railway Establishment Manual (IREM) the casual workers cannot be transferred from one unit to another. They do not have any lien in any particular unit. Since they have been working physically as Electrical Khalasis in the Electrical Division it is immaterial who maintained the service cards. A minimum educational qualification cannot be thrust upon them to make them ineligible. They have argued that the various Divisions under the Chief Engineer(Construction)

23

at Madras cannot be lumped together for regular absorption of casual workers in the Electrical Division. Since they have been discharging the duties of Electrical Khalasi satisfactorily without reference to their educational qualifications, insisting upon a minimum educational qualification at this stage for casual workers, who have been working for more than two to three years is unfair and in violation of the directions of the Supreme Court in Inderpal Yadav's case.

4. The learned counsel for the respondents in the course of the arguments ~~has~~ filed a statement dated 31st August, 1990 both in O.A 334/90 and O.A 627/90 ^{with a copy to the Id. counsel for applicants} confirming in writing certain clarifications which he had been giving through oral arguments. He has clarified that ^{since} ~~when~~ the Divisional Electrical Engineer's office at Ernakulam started functioning, the urgent works ^{were being} ~~have been~~ attended to by borrowing casual labourers through oral or written requests, from the concerned local official of the Civil Engineering Construction Unit. He has produced a typical letter dated 1.6.1988 of the Deputy Chief Engineer(Construction) Ernakulam addressed to the Chief Bridge Inspector(Construction) and Office Superintendent(Stores) asking ^{him} ~~them~~ to spare the services of 15 casual labourers. After this on 15.2.1989 the Executive Engineer(Construction)Ernakulam ~~has~~ directed the Permanent Way Inspector, working under him to depute eight Khalasis for some urgent work to the Divisional Electrical Engineer. ^A copy of the direction has also been enclosed with this statement. The learned counsel further clarified that casual workers working in the Electrical Division taken on loan from the Civil Engineering Division did not figure in the seniority list of Electrical

22

Division. He has specifically clarified that the muster roll of the regular casual labour under respondent No. 3 is being maintained and kept under the 3rd respondent, but the muster roll of the applicants and similar others who are taken on loan from the Civil Engineering Construction Unit are being "maintained and kept by the concerned Civil Engineering Construction Unit. Even though the markings in the said muster^{are} done on the work site, the muster sheet is sent to the concerned Civil Engineering Construction Unit at the end of the wage period in question for preparation of pay bill etc. and thereafter it is being kept and maintained by the concerned official in the Civil Engineering Construction Unit. The necessary entries regarding work etc. in the C.L. Cards of the applicants, are being made by the concerned official in the Civil Engineering Construction Unit only". He has further amplified the position as follows:-

"Pay Bills are prepared in the office of 3rd respondent, only for the staff and C.Ls on the rolls of the 3rd respondent and not for the applicants and others borne on the Rolls of the Civil Engineering Construction Unit. For them, the pay bills are prepared in the concerned Civil Engineering Unit only, along with the other employees there.

Payments for the C.Ls and other staff borne on the rolls under the 3rd respondent is made in the office of 3rd respondent, duly witnessed by the Electrical Foreman and Electrical Charge-man or any other staff in the office of 3rd respondent. This payment is made on the 12th of every month. At the same time the payment to the Applicants in both the O.As and similar others are made on 25th, 26th or 27th of every month, along with other employees in the Construction Civil Engineering Units at Ernakulam. This is done in the concerned Civil Engineering Office, duly witnessed by the Office Superintendent, P.W.I., B.R.I. etc. as the case may be. "

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicants have challenged the impugned circulars at Annexure D and E inviting volunteers with the essential S.S.L.C qualification and preferential qualifications on two main grounds. Firstly they have argued that even though they were originally engaged as casual labour in the Civil Engineering Unit and got temporary status there, they could not ^{have been} transferred on loan or deputation basis to the Electrical Division. According to them, for all intents and purposes, they are the regular captive casual workers of Electrical Engineering Division and they cannot be sent back to the Civil Engineering Division to give place to other casual labour who have been screened and selected on the basis of higher minimum qualification. Secondly they have challenged the impugned circular on the ground that ~~for existing casual labour~~, the respondents could not fix a minimum educational qualification to disqualify the existing casual labour working in the Electrical Division. The learned counsel for the applicants has cited the provisions of para 2501 of the IREM and various rulings of the Courts to indicate that as casual workers the applicants could not have been transferred from Civil Engineering Division to the Electrical Division. Para 2501(a) of the IREM reads as follows:-

"Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour."

In C.R Krishnamurthy v. The General Manager, S .Rly, Madras, SLJ 1986(3) (CAT) 418, the Madras Bench of the Tribunal held that the Railways cannot force a transfer to a casual employee even for the purpose of regularisation. The Ahmedabad Bench of the Tribunal in Jivi Chaku and others v. Union of India and others, SLJ 1988(4) (CAT) 800, held that under para 2501 of IREM casual labour being localised are not liable to transfer and transfer is not an incident of service for casual labour and hence no transfer can be forced on casual labour. We are inclined to accept the position that the applicants could not be transferred from Civil Engineering Division to Electrical Division, which are admittedly two distinct units for recruitment of casual workers. The applicants ^{however} ~~seem~~ to have given themselves away by the very argument of their non-transferability as casual worker. If they could not be transferred from ^{the} Civil Engineering to the Electrical Engineering Unit, the respondents are right in considering them to be on the pay rolls of the Civil Engineering Unit and accordingly the question of their being absorbed as regular casual employees of ^{the} Electrical Engineering Unit with preferential claim over the casual employees of other units does not arise. The applicants have conceded that they were originally recruited in the Civil Engineering Unit and obtained temporary status there. There was no retrenchment from the Civil Engineering Unit nor did they claim any retrenchment or other benefit from the Civil Engineering Unit before they took over in the Electrical Engineering Unit. The applicants have not been able to produce any documents to establish their claim of being fresh entrant in the Electrical Engineering Unit. On the other hand, the respondents have categorically stated that the muster sheets were sent from ^{the} work site to the Civil Engineering Unit and their wages were disbursed

22

by the Civil Engineering Unit on a date different from the date on which the casual employees regularly employed by the Electrical Engineering Unit received their wages. We are satisfied that by an informal arrangement, the casual employees of the Civil Engineering Unit ^{without being} transferred ^{discharged} _h the work of the Electrical Engineering Unit while deemed to be the casual employees of the former instead of the latter. Such an approach was taken by this Bench of the Tribunal in its judgment ^{Exbt. R1(a)} _h dated 28.2.1990 in O.A 680/89 filed by eight similarly placed casual workers who have been working in the Electrical Engineering Unit from the Civil Engineering Unit of Trichur. The application was dismissed, even though unlike the applicants before us, the applicants in that case had, at one stage, been declared to be on permanent casual engagement in the Electrical Division. In that case the Tribunal held as follows:-

"9. The applicants are casual employees and they are bound to work in the exigencies of work either at the place in which they were originally employed or at any other place whenever they are deployed for doing work in the interest of the Railway administration. Even in Annexure-B order by which they were provisionally posted it was mentioned that it was only a temporary re-deployment to work under the DEE/CN/ERS as requested by them. The fact that they have been treated as permanent hands under re-deployment as per Annexure-C will not confer any legal right on the applicants to continue at Ernakulam on the basis of Annexure-C because it appears that there is no sanctioned posts to accommodate the applicants in terms of Annexure-C and the works for which they had been engaged were over. The applicants are not really working in permanent vacancies at Ernakulam.

10. The vacancies as contemplated in Annexure-C had not been sanctioned and applicants are getting their wages and T.A. from Trichur even during the period when they were working at Ernakulam. So long as Annexure-C has not been approved by the higher authority by giving administrative sanction for the posts, the applicants' contention that they were permanently posted at Ernakulam cannot be accepted and we feel that there is no substance in the application which is only to be dismissed. Accordingly we do so."

Accordingly, the applicants before us for all intents and purposes always remained in the Civil Engg. Unit.

6. Let us take up the other main contention of the applicants that prescribing a minimum educational qualification of S.S.L.C for screening working casual employees of various units, for absorption as casual workers in the Electrical Engineering Unit is illegal. It may be noted that the respondents in para 5 of the counter affidavit ^{have} ~~conceded~~ ^{conceded} that "the educational qualification of S.S.L.C fixed in Annexure 'D' was later modified to 7th Standard". We are not very much impressed by the prescription of the minimum educational qualification for screening existing casual employees in the Electrical Engineering ^{or other} Divisions. The respondents have not been able to produce any document to counter the argument of the applicants that Khalasis in Electrical, Mechanical and Civil Engineering Divisions were ^{never} recruited with the minimum qualification of S.S.L.C or even the 7th Standard. Clause (iv) of Sub-section IV of Section 'A' of Chapter I of the IREM reads as follows:-

"(iv) Academic qualifications. Literacy as a qualifying condition -

- (a) should be insisted upon only for those categories for which it is essential for the proper execution of duties. Literacy should be taken to mean ability to read and write simple sentences in any language. It is not necessary to relate it to passing a prescribed examination or standard. The minimum standard need not be the same for all class IV services. It would have to be higher for a Fireman and later as a Driver than, say, for a Khalasi.
- (b) For all other categories literacy should not be insisted upon, but as amongst candidates considered suitable for appointment, preference should be given to literate candidates. The standard of literacy required should be taken to mean ability to read and write simple sentences. No standard of literacy will be insisted upon for casual labour. (emphasis added)

It appears that the above provision was amended by the
by a circular
Railway Board on 14.4.88, a copy of which has been appended
as Annexure A9 in O.A 627/90 which was heard along with
this application. That annexure is quoted below:-

" As Railway Administrations are aware, the instructions contained in Board's letter No.(NG) II/84/RR-I/26 dated 16.8.85 have been temporarily kept in abeyance pending review of the qualifications specified therein, and that further instructions in the matter will be issued separately as and when a decision is taken in this matter.

2. The Railway Board have decided that the qualifications as obtaining at present for recruitment to Group 'D' posts will also apply to casual labour or substitutes engaged as 'fresh faces'. Where engagement of such fresh faces is authorised by the G.M. personally as per extant instructions. Accordingly, the following sentences occurring at the end of para (iv) (b) of sub-section-IV of section 'B' of Chapter-I of the IREM (1968 Edition), will stand deleted forthwith.

"No standard of literacy will be insisted upon for casual labour".

3. A formal amendment to the I.R.E.M will follow." (emphasis added)

We are impressed by the argument of the learned Counsel for the applicants that the deletion of literacy exemption in case of casual labour is in regard to "fresh faces of casual labour or substitutes" as engagement of fresh faces is to be authorised by the General Manager personally. This means that the term "fresh faces" relate to those casual employees who had never been in casual employment in any of the recruitment units under the General Manager. It does not and cannot cover casual employees who are already working in one unit and are redeployed in another unit under the same Chief Engineer(Construction). Therefore, ^{the} condition of literacy much less that of 7th or 10th Standard cannot be imposed as minimum qualification on the casual employees of one unit for absorption in another unit. The authorities are fully within their

22

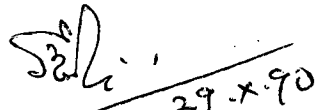
power to give preference to those who have got higher educational or professional qualification, but they cannot exclude 'in limine' those existing casual labour who do not possess a certain minimum educational qualification. The Supreme Court also in Bhagwati Prasad Vs. Delhi State Mineral Development Corporation, 1990(1) SCC 361, has held that while minimum educational qualification is relevant for initial entry, no educational qualification for regularisation of daily rated labour need be prescribed as their practical experience on the job would equip them adequately to discharge their duties effectively and would be a sure guide to assess their suitability. The fact that the respondents on their own, during the pendency of this application, reduced the minimum educational qualification from S.S.L.C. to 7th Standard, goes to show the inanity of prescribing minimum educational qualification for the existing casual employees.

7. In the facts and circumstances we allow this application in part to the extent of setting aside the circular dated 23.3.1990 in so far as it prescribes a minimum educational qualification of pass in S.S.L.C. or any other standard and direct that a fresh invitation to and screening of volunteers from amongst all eligible casual workers be conducted without prescribing any minimum educational qualification. The applicants should

be retained in their existing position in the Electrical Engineering Division till they are regularly selected if they volunteer or ^{are} replaced by casual workers regularly selected on the above basis. Action on the above lines should be completed within a period of six months from the date of communication of this order. There will be no order as to costs.



(A.V. Haridasan)
Judicial Member


29.X.90

(S.P. Mukerji)
Vice Chairman