

Central Administrative Tribunal

Ernakulam Bench

Dated wednesday the 28th day of February 1990

Present

Hon. Shri N.V. Krishnan, Administrative Member

and

Hon. Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION : 342/89

1. Martin Yoobert
2. Sreenivasan
3. P. Haridas
4. T.C. Alias
5. T.G. Suresh
6. K.V. Davis
7. P. Theyutty
8. V.R. Babu
9. K.K. Lumu
10. A.K. Udayan
11. A. Balan

.....the applicants

Versus

1. The Divisional Personnel Officer,
Southern Railway, Trivandrum
2. The Inspector of Works/Open Line
Southern Railway, Ernakulam.
3. The Inspector of Works/Special Works,
Southern Railway, Ernakulam.the respondents

M/s. Ashok M Cherian, K.V. Abraham and C.A. Joy, Advocates
appeared for the applicants

Smt. Sumathi Dandapani, Advocate appeared for respondents.

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicants are Casual Labourers engaged in the work as Khalasis under the respondents in the Trivandrum Division of the Southern Railway. All of them are continuously employed for the last several years and they have acquired temporary status. The applicants are seniormost labourers ^{by} ~~Khalasis~~ entitled to be absorbed in the regular vacancies of Khalasis.

2. The Railways issued orders creating 100 permanent posts of Khalasis under Inspector of Works in the Trivandrum Division for the specific purpose of decasualisation of casual labourers. These posts are earmarked for the absorption of the applicants and persons similarly situated. However instead of absorbing the casual labourers, the first respondent issued Annexure-II letter inviting options from regular employees for absorption in the post of Khalasis sanctioned ^{by} ~~by~~ the Railway Board under the de-casualisation scheme. On getting information about this, the applicants filed representation objecting the move of absorbing the regular employees to the post. Annexure-III is the representation. || The applicants approached the Tribunal for quashing Annexure-I memorandum by which 54 employees who volunteered for posting under IOW as Khalasis in response to the letter No. V/P.407/I/De-casualisation/Vol. II dated 2.3.1989 are posted as Khalasi in the

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scale Rs. 750-940. The applicants also sought for the direction to the respondents to absorb the applicants to the permanent post of Khalasis created by the order of the Railway Board under the de-casualisation scheme referred to above.


3. The respondents have filed counter affidavit and objected the claim of the applicants placing reliance on the earlier Judgment of the Madras Bench of the Tribunal in TA 60/85. The said judgment is produced as Ext. R-1 along with the counter affidavit.

4. Today we have disposed of O.A. 613/89 raising identical contentions. We think this case can be disposed of following our judgment in the aforesaid case. Accordingly, we dispose of the application with the following directions:

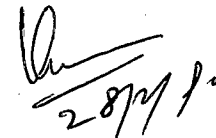
- (a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance, be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation;
- (b) The regular post of Khalasis may be offered to such casual labourers in the divisional seniority list who are waiting for regularisation. But if any casual labourer is not willing to be absorbed as Khalasi, 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 regularisation 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 de-casualisation scheme, these vacant posts can be filled up as a residuary measure by calling volunteers from regular Gangman and by conducting aptitude test amongst them.
- (d) The inter-se seniority as between the casual labourers appointed as regular Khalasis and regular Gangmen appointed as regular Khalasis shall be determined from the date from which the persons were first regularised either as Gangmen or 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 inducted will count their seniority from the date they were first regularised as Gangmen.

4. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

28.2.90


(N. V. Krishnan)
Administrative Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

R.A No. 76/90 in O.A. No. 342/89
T.A. No.

~~189X~~

DATE OF DECISION 20.7.1990

The Divisional Personnel Officer Applicant (s)
Southern Railway, Trivandrum and 2 others

Smt Sumathi Dandapani Advocate for the Applicant (s)

Versus

Martin Yoobert and 10 others Respondent (s)

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

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

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

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

In this Review Application filed by the Railway, the respondents in O.A 342/89, the limited request made, owing to the difficulty in implementing the directions in the judgment, are as follows:-

- (i) The directions contained in clauses (a) and (b) in the operative portion of our judgment dated 28.2.1990 may be limited to the casual labourers who have been empanelled on the basis of screening for regular absorption on divisional seniority.
- (ii) Necessary provisions may also be included in the directions in clauses (a) and (b) for conducting an aptitude test among the casual labourers who volunteer for being absorbed as regular Khalasis.
- (iii) The seniority referred to in clause (e) of the direction should be clarified as the seniority in the post of Khalasi on the basis of the date of absorption as Khalasi.

2. These grounds are strongly opposed by the respondents, the applicants in the Original Application. According to them there is no difficulty for implementing the directions in the judgment and no error on the face of the record and that the review petitioners have not made out any case for interference by way of review. If this petition is allowed, they will be deprived of the reliefs already granted by the judgment.

3. We have considered the contentions of both the parties. In the course of the argument it was also suggested by the learned counsel for the review applicants that the aptitude test mentioned in clause (c) of last but one para would be made applicable to Khalasi also.

4. We see considerable force in the request made by the applicants in the review petition. The clarifications sought for in this petition are only very minor and deserve consideration especially because the Railway is finding some difficulty in the actual implementation of the directions. Even though there is no error apparent on the face of the record as alleged by the applicants in the Original Application, in the interest of justice, we are of the view that slight changes in the last paragraph of the judgment are required, which we think can be incorporated without in any manner affecting detrimentally the rights of the applicants.

5. Accordingly we are inclined to effect the following changes and additions in the last but one paragraph of the judgment:-

- (i) In clause (a) of that para of the judgment after the word 'regularisation', the following may be added viz. 'according to their seniority in the Division and after subjecting them

to an aptitude test' .

- (ii) In clause (d) after the word 'regularised' the words 'either as Gangmen or' be deleted.
- (iii) For the last sentence in clause (e), the following sentence may be substituted. 'The Gangmen so inducted will count their seniority from the date they were absorbed as Khalasis'.

6. After incorporating the above changes, clause (a), (d) and (e) of the original judgment will read as follows:-

- "(a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance, be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation according to their seniority in the Division and after subjecting them to an aptitude test.
- (d) The inter-se seniority as between the casual labourers appointed as regular Khalasis and regular Gangmen 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 inducted will count their seniority from the date they were absorbed as Khalasis."

7. The Review Application is allowed to the extent shown above and the judgment passed by us in this case on 28.2.1990 is reviewed and modified as above. The modified copy of the judgment may be issued to all parties in this case.

(N.DHARMADAN)
JUDICIAL MEMBER

20.7.90

(N.V KRISHNAN)
ADMINISTRATIVE MEMBER