

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 352/98

MONDAY THIS THE 9TH DAY OF AUGUST, 1999.

C O R A M:

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

V. Vijayaraghavan
Thazhepurayil House,
Post Neerveli
(Via) Nirmalagiri
Kannur District.

..Applicant

By Advocate Ms N. Shobha

Vs.

1. Union of India represented by its Secretary
Ministry of Water Resources,
Shrama Shakti Bhavan,
New Delhi-1
2. The Central Water Commission
represented by its Chairman,
Seva Bhavan, R.K. Puram
New Delhi-6
3. The Chief Engineer (Southern Region)
Central Water Commission,
Singannollur, H.No. 10
Ramakrishnanagar, Coimbatore-5
4. The Supdt. Engineer,
Central Water Commission,
Bangalore.
5. The Executive Engineer,
Central Water Commission,
S.R.M. Road, Kochi.

..Respondents

By Advocate Mr. Sunil Jose, ACGSC

The application having been heard on 22.7.99, the Tribunal delivered the following on 9.8.1999.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant is a Seasonal Khalasi who had been working since 1981 under the respondents at different sites and who had filed earlier O.A. No. 141/87 and O.A.No.



1490/91 in this Tribunal has approached the Tribunal again through this O.A. seeking the following reliefs:

(i) Issue a direction to the 5th respondent to draw a final seniority list of Seasonal Khalasis strictly in accordance with the seniority and after issuing a draft seniority list to all Seasonal Khalasis;

(ii) Issue a direction to the 5th respondent to fill the posts of regular Khalasis purely on the basis of the final seniority list of Seasonal Khalasis.

(iii) Issue a direction to the 5th respondent to grant all the benefits admissible to Central Government Employees like casual leave, public holiday, bonus, etc. to the applicant;

(iv) Issue a direction to the 5th respondent to appoint only the applicant to the future need if arises without resorting to fresh hands in a year to the post of Seasonal Khalasis;

(v) Issue a direction to the 5th respondent to appoint the applicant from the point of starting of monsoon season;

(vi) Issue a direction to the 5th respondent to allow atleast 2 days time for joining duty to the applicant as Seasonal Khalasi.

2. According to the applicant, even though he was working from 1981 onwards, the respondents had not prepared any seniority list and they were appointing seasonal Khalasis to the post of Khalasis ignoring seniority and sometimes by transfer. It was stated by the applicant that there were number of vacancies of Khalasis and the respondents were not filling up all the vacancies resulting in the applicant and



similar other persons losing chance for appointment as Khalasis. The applicant stated that when one Sri T.M. Vichithran, similarly placed person as the applicant made a representation dated 2.12.96 (A4) with a prayer to fill up the vacancies of Khalasis considering him, he was replied by letter dated 17.5.96 (A5) stating that there was no proposal to appoint Khalasis on regular basis. The applicant alleged that he came to know that the third respondent had initiated steps to fill up the posts of regular Khalasis without adopting any norms and that there was a move to appoint fresh seasonal Khalasis by the 5th respondent after relieving the existing seasonal Khalasis against the law laid down by the Hon'ble Supreme Court in State of Haryana and others Vs. Piara Singh and others reported in JT 1992 (5) SC 179. Applicant claimed that there were 29 posts of Khalasis to be filled up. In view of the foregoing as well as the following grounds, the applicant sought the above reliefs:

- (i) Not considering the name of the applicant to fill the post of regular Khalasis on the basis of seniority of seasonal Khalasis was violative of the rights guaranteed to the applicant under Article 14 of the Constitution of India;
- ii) The applicant entered to service in 1981 as Seasonal Khalasi and till the date of filing of the O.A. he was continuing as seasonal Khalasi and that he was aged 47 years and in every year he could be employed only for 3 to 4 months and rest of the time he should depend upon other employment.
- (iii) The rich experience which he had acquired as a seasonal Khalasi would not only be of great help to the applicant but also beneficial to the respondents on the appointment of the applicant as a regular Khalasi.
- (iv) The applicant having no social security in his



service was getting employment every year for only 3 to 4 months but the appointment order was received 2 to 3 days late which meant loss of those days' job and further most of the time salary for the first and the last months of the employment are received very late. He claimed that he was also not getting service benefits as enjoyed by other persons and even the benefits as declared by the appointment order.

3. In the reply statement filed, the respondents resisted the claim of the applicant. They submitted that based on the directions of the Calcuta Bench and Guwahati Bench of the Tribunal, the Ministry of Water Resources had formulated norms to afford 'temporary status' to the seasonal Khalasis vide instructions circulated vide O.M.No.8/3/95-Estt.I(Vol.II) dated 20.6.97 and modified by letter dated 17.10.97 (R5(A) and R5(B) including the procedure for filling up of the posts in workcharged establishment on regular basis (referred to as 'Scheme' hereafter). According to respondents, the applicant whose service record copy was annexed as R 5(C) was not qualified for temporary status in accordance with the norms stipulated in the 'Scheme'. They denied that they were not maintaining seniority list of seasonal Khalasis properly and averred that the seniority list was maintained according to the initial appearance for duty and the number of seasons worked and the same was upto date. They also submitted that the applicant was allowed to examine his seniority position frequently but the list was not endorsed personally. They submitted that the applicant was employed for the monsoon season repeatedly and that appointment was offered to different person only in case of seasonal Khalasis of the previous years did not take up the offer. They also submitted that the total requirement of



seasonal Khalasis varied from 40 to 45 every year and the appointment was offered based on the seniority. According to the respondents, appointment of seasonal Khalasis was for additional hydrological observations during monsoon season and as no additional hydrological observations were conducted during the rest of the year, it would not be possible to continue their services beyond the specific period for which they were appointed. They further stated that in O.A. 141/87 filed by this applicant before the Madras Bench of the Tribunal (camp at Ernakulam), the Tribunal observed that the applicant would also be considered for regular appointment if his name was sponsored by the Employment Exchange as and when vacancy arose in future for the post of regular Khalasi. It was submitted that the applicant had been interviewed on 20.5.98 on the basis of the above direction of the Tribunal, outcome of which had not been finalised. They denied the assumption of the applicant that after relieving the existing seasonal Khalasis, fresh seasonal Khalasis were being appointed. Further, they stated that the appointment given to the seasonal Khalasis was for specific time frame and the appointment terminated, at the end of the period mentioned therein and the seasonal Khalasis stood relieved automatically. They further stated that even if it became necessary to continue the services of the seasonal Khalasis at any particular site, those /deployed at that particular station were extended and none other than the existing Khalasis had been employed. It was submitted that the question of filling up the likely vacancies through transfer arose only in case of administrative exigency and this would not adversely affect the employment opportunity of the seasonal Khalasis provided they were adjudged fit by

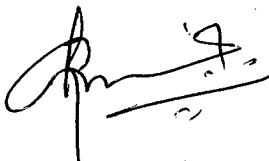


the Selection Committee. It was stated that the date of birth of the applicant was 1.2.1951 and hence, he needed relaxation of age limit by the competent authority as per recruitment rules R-5(E). They submitted that the employment of seasonal Khalasis for monsoon season year after year did not confer any right in them for regularisation and that regularisation was governed under the 'Scheme' and the applicant would be given due consideration on the basis of his seniority for regular appointment in accordance with the provisions of the 'Scheme.'

They stated that the applicant was not entitled to any reliefs prayed for in the O.A. and prayed for dismissal of the O.A.

4. Heard learned counsel for the parties. I have given careful consideration to the submissions made by the learned counsel for the parties as well as rival pleadings and have perused the records.

5. I find that ^{this is} the third time the applicant has approached this Tribunal. The grievance of the applicant in the earlier O.As (O.A. 141/87 and O.A. 1490/91) was that even though he was being engaged as a seasonal Khalasi from time to time under the respondents, he had not been regularised in service. Main prayers of the applicant in this O.A. is for finalisation of seniority list of seasonal Khalasis on the basis of seniority and filling up the posts of regular Khalasis according to the seniority. In the reply statement, the respondents had confirmed that they had prepared the seniority list and the engagement of seasonal Khalasis/monsoon Khalasis every year were being made on the basis of the seniority list and that in the seniority list the position of the applicant ^{was 3.} But the applicant's prayer in the first relief sought for is for a direction for finalisation of the

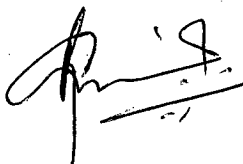


seniority list on the basis of service as seasonal Khalasi so that he can get the second relief of a direction for filling up the post of Khalasis on the basis of such seniority.

6. In O.A.No. 1490/91, the order of this Tribunal is as under:- (Annexure A2)

"Keeping the conspectus of facts and circumstances in view, we close this application with the direction that the applicant shall be appointed as a Seasonal Khalasi on adhoc basis, if work is available in preference to persons with lesser length of adhoc service or fresh hands. It will not be necessary for the applicant to be sponsored every time a seasonal appointment is made. We further direct that the applicant also shall be considered along with other eligible candidates for regular appointment as Khalasi as and when a vacancy arises even though he is not sponsored by the Employment Exchange. We are issuing this direction advisedly because in accordance with Annexure P-1, the applicant had been nominated by the Employment Exchange for seasonal appointment and so for regularisation, a further nomination to our mind is not necessary. It goes without saying that for regularisation to the post of seasonal Khalasi, the length of applicant's past services shall be taken into account. There is no orders as to costs."

7. It is evident from the above that the seniority list of seasonal Khalasis for the purpose of filling up the posts of regular Khalasis has to be on the basis of their actual aggregate length of service in successive years.



Obviously, such a seniority list is not prepared. Respondents are directed to finalise such a list. As seniority list of any cadre is first notified as a provisional one inviting objection if any from the concerned employees of the cadre, the respondents are directed to finalise the seniority list following the above procedure.

8. Respondents have resisted the prayer of the applicant for regularisation. They have submitted referring to the service record of the applicant R-5(C) that in terms of the provisions of the 'Scheme,' the applicant did not qualify for temporary status. However, the respondents have not clearly stated as to how the applicant did not qualify. I find from the service record that while in 1995 there was no break in the seasonal employment of the applicant, a break of 2 to 3 days is indicated in 1996 and 1997. He was also not on roll on 1.6.97 the effective date of commencement of the 'Scheme.' In para 4 of the 'Scheme' sub-titled 'Definition' it had been stated that the seasonal Khalasis are employed during the months from June/July to September/October when the monsoon is very active. This would mean that the applicant and other similarly placed seasonal Khalasis would never be granted temporary status as their engagement will in every year be for periods less than 240 days and once they are not given 'temporary status' they will not be eligible for consideration against work-charged posts on regular basis as per the 'Scheme.' I find that the 'Scheme' as it is framed now is clearly against the law laid down by the Hon'ble Supreme Court in Piara Singh's case (JT 1992 (5) SC 179) and the objective as laid down in the 'Scheme'. But the 'Scheme' as such is not under challenge before me. The applicant is before me seeking the reliefs. I find that the reliefs sought for by the applicant is practically covered by the decisions of this



Tribunal. Respondents have stated that the interview of the applicant was held on 20.5.98 on the basis of the order of this Tribunal in; O.A. 141/87. No reference to the later order of this Tribunal in O.A. 1490/91 has been made in the reply statement directions of which have been extracted ^{in para 6} above.

O.A. No. 1490/91 was decided on 20.3.92 and the same has become final between the parties. From the reply statement it would appear that the respondents are taking shelter behind the 'Scheme' framed in 1997 to deny the implementation of the order of this Tribunal in O.A. 1490/91. This cannot be accepted.

9. In view of the foregoing, the respondents are directed to:

(i) finalise the seniority list of seasonal Khalasis as directed in para 7 above.

(ii) consider the applicant for appointment against workcharged post of Khalasi on regular basis based on his seniority without reference to the 'Scheme.'

(iii) grant necessary relaxations in favour of the applicant from the provision of the Recruitment Rules as required for (ii) above.

(iv) Till regularisation, applicant be continued to be engaged as seasonal Khalasi.

10. The Original Application is disposed of with the above directions with no order as to costs.

Dated the 9th August, 1999.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

List of Annexures referred to in this Order

- Annexure A2 True copy of the judgment dated 20.3.92 in O.A. 1490/91 of this Hon'ble Tribunal.
- Annexure R5(A) A photocopy of instructions circulated vide O.M.No.8/3/95-Estt.I(Vol.II) dated 20.6.97 of the Director, Ministry of Water Resources, New Delhi.
- Annexure R5(B) A photocopy of the modified letter of even number dated 17.10.97 of the Under Secretary, Ministry of Water Resources.
- Annexure R5(C) A photocopy of the service record of applicant Sh ri Vijayaraghavan, Seasonal Khalasi issued by the 2nd respondent.
- Annexure R5(E) A photocopy of the recruitment rules for Khalasis issued by the 1st respondent