

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 38 of 1996

Friday, this the 7th day of November, 1997.

CORAM

HON'BLE MR P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

D. Jayakumar, Air Condition Khalasi,
Southern Railway, Mangalore.

By Advocate Mr P.K. Madhusoodhanan.

Vs

1. The General Manager, Southern Railway,
Park Town, Madras -3.
2. The Divisional Personnel Officer,
Southern Railway, Thiruvananthapuram-14.
3. The Senior Divisional Electrical Engineer,
Southern Railway, Palakkad.
4. The Divisional Railway Manager(P),
Southern Railway, Palghat.
5. P. Sasi, Air Condition Coach Attendant,
Southern Railway, Palghat Division.
6. M. Surendran, Air Condition Coach Attendant,
Southern Railway, Mangalore, Palghat Division.
7. P. Gangadharan, Air Condition Coach Attendant,
Southern Railway, Mangalore, Palghat Division.
8. K. Rajendran, Air Condition Coach Attendant,
Southern Railway, Coimbatore, Palghat Division.
9. A. Sreehari, Air Condition Khalasi,
Air Condition Coach Attendant,
Southern Railway, Mangalore, Palghat Division.
10. T. Krishnadas, Air Condition Coach Attendant,
Southern Railway, Mangalore, Palghat Division.
11. C.M. Basheerjan, Air Condition Coach Attendant,
Southern Railway, Mangalore, Palghat Division.
12. K.J. Vincent, Air Condition Coach Attendant,
Southern Railway, Palghat.
13. P. Jayanandan, Air Condition Coach Attendant,
Mangalore, Palghat Division.
14. The Chief Personnel Officer,
Southern Railway, Park Town, Madras.
15. Union of India represented by its Secretary,
Ministry of Railways, Rail Bhavan, New Delhi.

By Advocate Mr P.A. Mohamed for Respondents 1-4, 14 & 15.

" Mr T.A. Rajan for Respondent - 15 to 13.

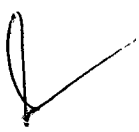
The application having been heard on 22.10.1997,
the Tribunal delivered the following on 7.11.97.

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

The applicant aggrieved by the denial of promotion to him as Air Condition Coach Attendant, seeks to declare that he is senior to Respondents 5 to 13 in the post of Air Condition Khalasi and entitled to get promotion to the post of Air Condition Coach Attendant in preference to them, to direct the respondents to draw up and finalise the seniority list of Air Condition Khalasis first and then that of Air Condition Coach Attendant in accordance with law, to quash A14 in so far as it grants promotion and posting to respondents 5 to 13 as Air Condition Coach Attendant, to quash A17 and to direct the respondents to grant promotion and posting to him as Air Condition Coach Attendant with effect from 8.8.1994 as ordered in A13 with all consequential benefits.


2. Applicant was initially appointed as a substitute in the Electrical Department on 24.1.1984 and attained temporary status on 23.5.1984. While working as such, the department invited volunteers for being absorbed/posted to the Air Condition Unit as per A1 dated 4.7.1986. Applicant is at present working as Air Condition Khalasi in the scale of Rs.750-940. He has passed the SSLC and ITI examinations. As per A2, the applicant along with others were posted to the Air Condition side with effect from 5.6.1989. According to applicant, Respondents 5 to 13 have not passed the SSLC examination which is the minimum educational qualification prescribed for absorption in Air Condition Cadre as Air Condition Khalasis and Respondents 5,8,11 and 12 have not even passed the 8th Standard. They



were not selected as per the regular process of selection till 15.2.1991. On 15.2.91 if the department had considered their basic educational qualification, they would not have been selected as they were not eligible to be considered for the post of Air Condition Khalasis. Only due to favouritism and nepotism respondents 5 to 13 were absorbed as Air Condition Khalasis from 5.6.1989 as per A9. Applicant was regularised in service as Air Condition Khalasi as per order dated 29.12.1992. According to applicant he is, therefore, entitled to get seniority in Air Condition Cadre as Air Condition Khalasi with effect from 5.6.1989.

3. According to departmental respondents, this O.A. is hit by resjudicata, that the applicant was redeployed in the Air Condition Wing as per A2 with effect from 5.6.1989 purely to meet urgent requirements in the said wing, that he was regularly absorbed as AC Khalasi with effect from 6.9.1993 and is entitled to seniority only from that date, that in the case of respondents 5 to 13 one time exemption was granted by the Chief Personnel Officer with regard to educational qualification taking into account the proficiency and experience gained by them in the maintenance of AC equipments during their temporary utilisation as AC Khalasis from 11.4.1986, and that as he is not sufficiently senior, he could not be promoted as AC Coach Attendant even though he had passed the service suitability test.

4. This Bench of the Tribunal directed in the light of the averments in the reply statement that relaxation was granted by the Chief Personnel Officer by letter dated 21.3.1990, the departmental respondents to produce the letter dated 21.3.1990 to indicate the authority under which



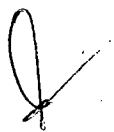
the Chief Personnel Officer was enabled to grant exemption and also proof of educational qualification of respondents 5,8,11 and 12.

5. In response to that, the departmental respondents filed an additional reply statement along with true copy of the letter of the Chief Personnel Officer, Madras, dated 21.3.1990 and proof of educational qualification of respondents 5,8,11 and 12. In the additional reply statement filed by the departmental respondents it is stated that as per R4 letter dated 21.3.90 issued by the Chief Personnel Officer, Southern Railway, Madras, the educational qualification has been relaxed from SSLC to 8th Standard as one time exemption, that as per rule 124 of Indian Railway Establishment Code (Vol.I), the General Managers of the Zonal Railways are vested with powers for making rules in respect of Group C and D servants, that educational qualification of respondents 5 and 8 is 8th Standard, of the 11th respondent is 5th Standard and of 12th respondent is 7th Standard, and that the educational qualification of respondents 11 and 12 could not be verified at the time of their absorption in the Air Condition Wing due to want of necessary documents.


6. The stand of the applicant that respondents 5 to 13 do not possess the minimum educational qualification prescribed for the post of AC Khalasis is resisted by the departmental respondents on the strength of R4 letter dated 21.3.90 issued by the Chief Personnel Officer purportedly relaxing the educational qualification.

7. After going through the additional reply statement filed by the 4th respondent as per order dated 13.10.97

we directed the 4th respondent who filed the additional reply statement, to appear in person before the Tribunal on 22.10.97 to explain certain statements he has made in the additional reply statement. The 4th respondent is the Divisional Railway Manager (Personnel), Southern Railway, Palakkad. The original reply statement was also filed by the very same officer who has filed the additional reply statement, the then Divisional Personnel Officer, Palakkad, Shri A.N. Sasidharan. From A1 dated 4.7.86 inviting applications from Electrical Khalasis working in the Power side and Train lighting side who are willing to be posted in the AC side it is seen that the volunteers should have the minimum educational qualification of SSLC pass. From A3 dated 16.8.85 it is seen that the educational qualification for Khalasis to be taken in the AC side is SSLC pass. From A4 dated 19.8.95 also it is seen that the minimum educational qualification for the post of Khalasis in the Air Condition Wing is SSLC pass. That has been relaxed according to the respondents as per R4 dated 21.3.90. As per R4, the educational qualification is relaxed to 8th Standard pass. In the reply statement what is stated by the then Divisional Personnel Officer, Palakkad, who has verified and signed the reply statement is that the educational qualification as per R4 has been relaxed from SSLC to 8th Standard. We do not expect a Divisional Personnel Officer to be ignorant of the difference between having studied in the 8th Standard and having passed 8th Standard. The officer who has verified and signed the additional reply statement instead of specifically stating that the educational qualification has been relaxed from SSLC to 8th Standard pass has simply stated that the educational qualification has been relaxed from SSLC to 8th Standard relying on R4. As already stated R4 specifically



says that educational qualification has been relaxed to 8th Standard pass. So, it is not enough to have studied in the 8th Standard. The reply statement should contain all the material facts on which the respondents rely for their defence. There shall be no suppression of any material fact. The fact which is stated in the reply statement should be specific and not ambiguous, vague or evasive. The then Divisional Personnel Officer, Palakkad who has verified and signed the additional reply statement should have specifically stated in the additional reply statement that as per R4, the educational qualification has been relaxed from SSLC to 8th Standard pass instead of saying simply that educational qualification has been relaxed from SSLC to 8th Standard. There is reason for the officer who has verified and signed the additional reply statement not to state this material fact specifically. When R4 is relied on for the purpose of taking the stand that the educational qualification has been relaxed, the reply statement should contain exactly the contents in R4 without any addition or omission. What is done in this case is that the word 'pass' is omitted in the additional reply statement. By a reading of the additional reply statement it would appear that it is not necessary that one should have passed the 8th Standard in order to avail of the relaxation as per R4. As already stated, there is a reason for the officer concerned to state like that and the reason is very obvious. Respondents 5,8,11 and 12 do not even possess the educational qualification of 8th Standard pass. R5(a) is the transfer certificate in respect of 5th respondent issued by the Headmaster, Jawaharlal Nehru Memorial Secondary School, Puduppanam. From the same it is seen that 5th respondent was admitted in the 8th Standard and he left the school while he was



in the 8th Standard. The reason for issuance of transfer certificate contained therein is 'removed for long absence'. Thus, it is very much evident from R5(a) that the 5th respondent has not passed 8th Standard. R5(b) is the transfer certificate relating to the 8th respondent. From the same it is clearly seen that he was detained in 8th Standard. So, he has also not passed 8th Standard. In order to cover up that the then Divisional Personnel Officer, Palakkad, has stated in the additional reply statement that the qualification has been relaxed from SSLC to 8th Standard.

8. From R5(c) it is seen that the 11th respondent was studying in 5th Standard at the time of leaving the school and from R5(d) it is seen that the 12th respondent has passed only 7th Standard.

9. To crown all these things, it is also stated in the reply statement that the educational qualification of respondents 11 & 12 could not be verified at the time of their absorption in the Air Condition Wing due to want of necessary documents. We find it difficult to understand and follow. How can the authority concerned be so indifferent and absorb them as Air Condition Khalasis without verifying and getting convinced of the educational qualification which is admittedly prescribed. It appears from the additional reply statement that the department will absorb any body in the Air Condition Wing without verifying the educational qualification. It cannot be like that. The 4th respondent who has verified and signed the reply statement and additional reply statement in pursuance of our direction appeared in person before the Tribunal, but he could not give any satisfactory or convincing explanation for the averments made in the additional reply statement. His answers were highly evasive. This only reflects the

indifference, carelessness and irresponsibility on the part of then Divisional Personnel Officer, Palakkad who has verified and signed the additional reply statement.

10. The applicant has specifically stated in the O.A. that respondents 5 to 13 were absorbed in the Air Condition Wing as Air Condition Khalasis only due to favouritism and nepotism. The manner in which the additional reply statement has been filed will lead to a situation very difficult to rule out the contention of the applicant that respondents 5 to 13 were absorbed as Air Condition Khalasis due to favouritism and nepotism.

11. Learned counsel appearing for the applicant argued that the qualification of SSLC pass prescribed for absorption as AC Khalasis cannot be relaxed by the Chief Personnel Officer by virtue of R4, since the Chief Personnel Officer is not competent to do so. Even going by the stand of the departmental respondents that as per R4 relaxation has been granted, it is very clear that respondents 5,8,11 and 12 do not possess even a pass in the 8th Standard which is the minimum educational qualification prescribed as per R4. As far as the validity of R4 is concerned, the common judgment pronounced by this Bench of the Tribunal in O.A.249/91 and 583/91 will throw much light. There respondents 1 to 3 are Government of India represented by the General Manager, Southern Railway, Madras, Divisional Personnel Officer, Southern Railway, Trivandrum and Senior Divisional Electrical Engineer Southern Railway, Trivandrum. In para 11 of the common judgment in O.A.249/91 and 583/91 it is stated thus:

"The respondents 1 to 3 in their reply statement do not specifically deal with Annexure A8 series, but they relied on ext.R1 to R3 and contended that the staff in the AC Unit have to deal with a number

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of discipline in addition to refrigeration and hence the minimum educational qualification of SSLC/Matriculation should be insisted upon for absorption and posting of Khalasis in A.C. Wing of the Electrical Branch. In the reply statement filed by respondents 4,5,8,10 to 18 they have stated that the Annexure A8 series applicable only to casual service and literacy is not insisted upon in their case."

(emphasis supplied)

So, it is clear from the same that the stand taken by Railways in that case was that the minimum educational qualification of SSLC/Matriculation should be insisted upon for absorption and posting as Khalasis in AC Wing. R4 by virtue of which the departmental respondents in this O.A. claim relaxation of educational qualification is dated 21.3.90. So, even before filing of O.A.Nos. 249/91 and 583/91, R4 was issued. In spite of the existence of R4 dated 21.3.90 in O.A. Nos. 249/91 and 583/91 the stand taken by the railways is that SSLC/Matriculation is the minimum qualification for absorption/posting of Khalasis in the AC Wing. The 2nd respondent in O.A. Nos.249/91 and 583/91 is the 3rd respondent in this O.A. The reply statement is filed by 4th respondent in this O.A. on behalf of other departmental respondents. In O.A. Nos. 249/91 and 583/91 the contention of the respondents 1 to 3 therein as to the minimum educational qualification of SSLC/Matriculation was upheld by the Tribunal. Now the very same department, Railways, cannot take a different stand. There is specific reference made in this O.A. as to the order in the said two O.As. It is thus stated in the O.A. that:

"The prescription of Secondary School Leaving Certificate pass as minimum educational qualification for consideration for absorption of employees as Air Condition Khalasis in the Air Condition cadre has been accepted and upheld by this Hon'ble Tribunal in O.A. No. 249/91, 583/91 vide its order dated 28.5.1992...."


There is nothing stated in the reply statements filed by the departmental respondents that the plea raised by the department in the reply statement filed in O.A. Nos. 249/91 and 583/91 that the minimum educational qualification is SSLC/Matriculation for absorption and posting of Khalasis in the AC Wing happened due to any mistake, leave alone the grounds of mistake. So, there is an admission made by the departmental respondents in O.A. Nos. 249/91 and 583/91 that SSLC/Matriculation is the minimum educational qualification for absorption and posting of Khalasis in the AC Wing. An admission made by one party can be relied on ^{by} the opposite party unless the party who made the admission is able to convince the Tribunal that it was done due to a mistake. The question of considering whether it was so stated due to any mistake does not arise for the simple reason that there is no case for the departmental respondents that the stand taken by them that the minimum educational qualification is SSLC/ Matriculation in O.A. Nos. 249/91 and 583/91 was due to a mistake. So, what emerges is that the department did not act upon R4. The reason stated by the applicant is that the Chief Personnel Officer has no authority to relax the educational qualification by issuing R4. But whatever be the reason, it is very much evident that R4 order of relaxation of educational qualification was not acted upon. If that is so, why the departmental respondents are now relying on R4. The department cannot take different stands at different times in respect of the same issue. They cannot be allowed to blow hot and cold. So, in the light of the admission contained in the reply statement filed by the departmental respondents in O.A.Nos. 249/91 and 583/91 it is clear that the qualification shown in A1, A3 and A4 a pass in SSLC/ Matriculation is the qualification insisted upon for absorption/ posting of Khalasis in the AC Wing and the



relaxation from SSLC pass to 8th Standard pass as per R4 was not acted upon by the authority. That being the position, the stand taken by the departmental respondents based on R4 cannot be accepted for a moment.

12. Respondents 5 to 13 in the reply statement filed by them have not denied the averments in the O.A. that these respondents have not passed the SSLC examination, the required minimum educational qualification prescribed for absorption in Air Condition Cadre as Air Condition Khalasis and the respondents 5,8,11 and 12 have not even passed the 8th Standard. What it is not specifically denied is to be taken as admitted. It is stated in the reply statement filed by the respondents 5 to 13 that 'the respondents 4 to 13 were regularly absorbed in the Air Condition Wing considering their educational qualification and experience in the Air Condition Wing'. It cannot be Respondents 4 to 13, but it could only be respondents 5 to 13 for the plain reason that 4th respondent is the Divisional Railway Manager (P), Southern Railway, Palakkad and only respondents 5 to 13 are the private respondents. The version of respondents 5 to 13 that they were absorbed in the Air Condition Wing considering their educational qualification is not correct in the light of the admission made by the departmental respondents in the additional reply statement that 'the educational qualifications of respondents 11 & 12 could not be verified at the time of their absorption in the Air Condition Wing, due to want of necessary documents'.

13. From what is stated above, it is clear that the department allowed the private respondents 5 to 13 to enter through back door and that too keeping wide open for respondents 5,8,11 and 12.



14. According to applicant, he is entitled to get seniority in the Air Condition Cadre as Air Condition Khalasi with effect from 5.6.89 the date on which he joined in the Air Condition Cadre. According to respondents, the applicant was redeployed in the Air Condition Wing as per A2 order with effect from 5.6.89 purely to meet the urgent requirement in the said wing and he was regularly absorbed as AC Khalasi with effect from 6.9.93 and the private respondents 5 to 13 were regularly absorbed as AC Khalasi from 22.4.91 and therefore, the applicant can claim seniority only with effect from 6.9.93. Back door entrants cannot be regularised. Persons appointed in violation of the rules and regularised in service by purportedly relaxing the rules should be replaced by persons regularly recruited in accordance with the rules. Those not appointed initially as per rules cannot be given seniority from the date of appointment. This Bench of the Tribunal in OAK 159/88, OAK 298/88 and OAK 95/88 has held that seniority in the AC Unit will be reckoned from the date of posting in the AC Unit. So, the applicant is entitled to seniority from the date of posting in the AC Unit which is admittedly 5.6.89. In the common order in O.A.Nos.249/91 and 583/91 this Bench of the Tribunal observed thus:

"It may also be pointed out that the Railway Board's order dated 16.8.85 at Annexure R1 which laid down educational qualifications for recruitment of Khalasis pertain to direct recruitment to Group D vacancies as the following extracts from that circular would indicate:

"The aforesaid minimum qualifications will apply to engagement of 'fresh faces' as casual labour or as substitutes, as also for direct recruitment in Group 'D' vacancies, wherever engagement of 'fresh faces' or direct recruitment is permitted under the instructions in force from time to time."


(emphasis added)

Whether this circular is in force or in abeyance is not relevant to the issue before us which is

one of placement and deployment of existing regular Khalasis already working as regular Group D staff as AC Khalasis in the same scale of pay".


It is the case of the departmental respondents that the applicant was redeployed as per A2 order with effect from 5.6.89. Learned counsel for the private respondents drew our attention to the judgment of this Bench of the Tribunal in O.A. 334/90. It was prayed in that O.A. that inviting volunteers from casual labourers with temporary status for redeployment in the Electrical Construction Branch in Madras, Madurai and Trivandrum Divisions and prescribing a minimum qualification of SSLC pass with desirable additional technical qualifications along with some other conditions should be set aside. So, it is clear that this is not a case pertaining to Air Condition Wing. That being so, the said ruling has no application to the facts of the case at hand.

15. It is contended by the official respondents that this O.A. is barred by resjudicata in the light of O.A. 285/94 and O.A. 1600/94. O.A. 285/94 was disposed of directing the 4th respondent to consider A5 therein and permitting the applicant to appear at the aptitude test in the Electrical AC side for the post of ACCA. O.A. 1600/94 was disposed of permitting the applicant to submit a representation to the Chief Personnel Officer, and if submitted, to be disposed of within 3 months from the date of receipt of the representation. The questions involved herein were not considered in those two O.As. So, the questions involved herein were not heard and finally decided in the aforesaid two O.As. That being so, there cannot be any bar of resjudicata.



16. The private respondents have stated in their reply statement that this O.A. is liable to be dismissed due acquiescence, delay and laches. It cannot be said for a moment that there is any acquiescence, delay and laches on the part of the applicant. He has been agitating his grievance from the very beginning as borne out by the materials produced in this O.A. A5 dated 8.6.89 is the earliest representation made by the applicant and others with regard to the grievance. A7 is another representation by the applicant and others. A10 dated 8.10.91 is still another representation submitted by the applicant and others for redressal of their grievance. A11, A18, A20 and A23 are also representations for redressal of the grievance of the applicant. So, there is no acquiescence, or delay or laches on the part of the applicant.


17. As per A14 dated 30.10.94, the private respondents have been promoted to the ex cadre post of ACCA in the scale of Rs.800 - 1150 from the post of AC Khalasis in the scale of Rs.750 -940. The applicant's name is not included in A14. A17 is the order dated 20.1.95 rejecting the representation of the applicant for assigning seniority over the private respondents 5 to 13. The grounds stated in A17 for not granting seniority to the applicant above the private respondents 5 to 13 is that they were absorbed as AC Khalasis from 22.4.91 whereas, the applicant was absorbed as AC Khalasi regularly only from 6.9.93. A17 order cannot be upheld in the light of what is stated above. That being the position, A14 seniority list placing private respondents 5 to 13 above the applicant also cannot be upheld.



18. As per A13 dated 8.8.94, the applicant was promoted to the ex cadre post of ACCA and was posted to Palakkad. The departmental respondents say that A13 order dated 8.8.94 was erroneously issued and the order was rectified cancelling the erroneous promotion as per R3. R3 says that the promotion of the applicant to the ex cadre of ACCA in the scale of Rs.800 -1150 for one year from the date of promotion issued is treated as cancelled. R3 does not say any ground for cancellation. Such an order is not sustainable.

19. Accordingly, the O.A. is allowed quashing A14 so far as it grants promotion and posting to respondents 5 to 13 as Air Condition Coach Attendant, setting aside A17, declaring that the applicant is senior to respondents 5 to 13 in the post of Air Condition Khalasi and entitled to get promotion to the post of Air Condition Coach Attendant in preference to Respondents 5 to 13 from an earlier date than that of the said respondents, directing the departmental respondents to draw up and finalise the seniority list of Air Condition Khalasis first and then that of Air Condition Coach Attendant in accordance with law and directing the departmental respondents to grant promotion and posting to the applicant as Air Condition Coach Attendant forthwith in terms of A13 with all consequential benefits arising therefrom. The applicant is entitled to costs Rs.1000/- from the departmental respondents and also an equal amount from the private respondents together.

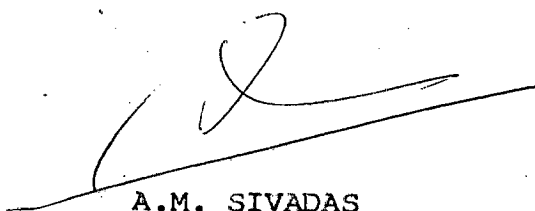
20. Before parting we are constrained to observe that arbitrariness writ large on the part of the department in this matter by absorbing unqualified hands as AC Khalasis.



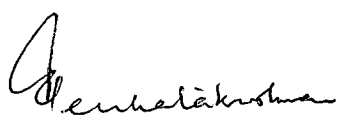
We deprecate the irresponsible way in which the reply statements have been filed by the then Divisional Personnel Officer, Palakkad, Shri A.N. Sasidharan.

21. The Registry shall forward a copy of this order to the Railway Board for initiating appropriate action against the persons responsible for creating the situation that has arisen in this case. The Railway Board shall inform the Registry within two months from the date of receipt of the copy of the order as to the action taken and the result of the action taken within a period of six months.

Dated the 7th of November, 1997.



A.M. SIVADAS
JUDICIAL MEMBER



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

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