

In the 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 : 398/89

Applicants

1. V. Velukutty,
2. S. Sreekumaran Nair
3. K. Sreekantan
4. Viswambaran Assari
5. S. Krishnan Nair
6. K. Sadasivan Nair
7. A. Vijayan

Versus

Respondents

1. The Union of India represented by  
the General Manager,  
Southern Railway, Madras.
2. The Divisional Personnel Officer,  
Southern Railway, Trivandrum
3. Inspector of Works, Southern Railway  
Trivandrum
4. Senior Divisional Engineer, Southern  
Railway, Trivandrum

Mr. P.K. Madhusoodhanan, Advocate appeared for the  
applicants

Mrs. Sumathi Dandapani, Advocate appeared for the  
respondents

JUDGMENT

HON'BLE SHRI N. DHARMADAN, JUDICIAL MEMBER

The applicants 1, 2, 4, 6 and 7 joined the Southern Railway as Casual Labourers in 1983. They were given the pay scale of Rs. 260-400. The applicants 3 & 5 though engaged as Casual Labourers were transferred from the Construction Wing to the Open line and they were given temporary status as per Annexure-5 order. By order Annexure-7 the applicants 6 & 7 were also given temporary status. The other applicants submitted representations for getting temporary status. Since the applicants are working in the scales without any break they are entitled to be absorbed as regular workmen in the Railway.

2. The applicants apprehended that they will be ordered to go to other departments as Gangmen in a lower scale of pay and the post of regular Khalasis which are available for absorption of the applicants will be filled up with Gangmen on the basis of <sup>their</sup> option. Under these circumstances, they have approached this Tribunal under Section 19 of the Administrative Tribunals Act with the prayer that the respondents may be restrained from disturbing the applicants from the post in which they are now working. They also prayed for a direction that the applicants should be absorbed in the regular post of Khalasis.


3. The respondents have filed counter affidavit stating that the applicants cannot be isolated or singled out for empanelment. They are only casual labourers engaged on sporadic intermittent nature. They submitted that there is no rule which prescribes that the Casual labourers should be continued in the skilled or unskilled labour <sup>category 4</sup> if there is no work ~~to be~~ <sup>4</sup> offered to them. But if they are empanelled they could continue in regular service and seek better prospects. <sup>4</sup> But if they are not inclined to be empanelled they can continue as casual labourers as long as the work is available. Once the work is over they have to be reverted. ~~or promoted.~~ <sup>4</sup>

4. Today we have disposed O.A. 713/89 raising identical contentions. We think this case can be disposed of following our judgment in the above case. Accordingly, we dispose of the application with the following directions:-

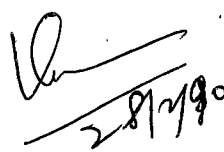
- (a) The posts of Khalasis created under the de-casualisation scheme shall, in the first instance, be filled up by calling volunteers from casual labourers in the Division who are waiting for regularisation;
- (b) The regular post of Khalasis may be offered to such casual labourers in the divisional 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.
5. There will be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

28.2.90.

  
(N. V. Krishnan)  
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

R.A No.75/1990 in O.A. No. 398 / 1989 ~~199x~~  
A. No.

DATE OF DECISION 20.7.1990

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

Smt. Sumathi Dandapani Advocate for the Applicant (s)

Versus

V. Velukutty and 6 others Respondent (s)

Mr P.K Madhusoodhanan 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 No.398/1989, 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 but one 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 addition 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

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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 of 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 be 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 above. The modified copy of the judgment may be issued to all parties in this case.

  
(N. DHARMADAN) 20.7.90  
JUDICIAL MEMBER

  
(N.V KRISHNAN)  
ADMINISTRATIVE MEMBER.