

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.516/2003

This 15th day of April 2010

HON'BLE MR. M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A.K. MISHRA, MEMBER (A)

1. Khursheed Anwar, aged about 38 years, son of Sri M.K. Beg, resident oif 547/178/2,--Jalalpur, Post Office Rajajipuram Colony Near Rameshwar College, Lucknow.
2. Mustafa Hussain aged about 39 years, son of Mohd. Hussain resident of 155/306, Maulvi Ganj, Lucknow.

.....Applicant

By Advocate: Shri Dharmesh Sinha.

Versus.

1. Union of India through Secretary, Ministry of Railways, Baroda House, New Delhi.
2. General Manager, Northern Railways, Baroda House, New Delhi.
3. Deputy Chief Mechanical Engineer (W) C&W Shops, Northern Railway, Alambagh, Lucknow.
4. Assistant Personnel Officer, Northern Railway, New Delhi.
5. Assistant Personnel Officer (W) C&W Shops, Alambagh, Lucknow.

.....Respondents.

By Advocate: Shri Praveen Kumar for Shri Anil Srivastava for R-1, 3 & 4.

Shri B.B. Tripathi for Shri M.K. Singh for R-2.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER (J)

The applicants No. 1 and 2 have filed this OA with a prayer to strike down the post of "Gagman" and "division" offered to the applicants from the letter dated 27.08.2001 (Annexure-A-1) and consequently direct the respondents to allow the applicants to join on the post of "Khalasis" in "C&W Workshop, Alambagh, Lucknow"

with attended benefits as indicated in the judgment dated 15.02.2000 (Annexure-A-3).

2. The respondents have filed reply denying the claim of the applicants stating that they are not entitled to the relief as sought in the OA.

3. Heard both sides.


4. The point for consideration is whether the applicants are entitled to the relief as prayed for.

5. The brief facts of the case are that the applicants were include in the panel dated 22.5.1984 (Annexure-A-2) on the post of Casual Khalasis on daily wages but the same was cancelled vide order dated 3.1.1985. Against the said cancellation some of the aggrieved persons have preferred Writ Petition No.590/1985 on the file of Hon'ble High Court and some of them preferred O.A.No.500/1986 on the file of this Tribunal. Subsequently, writ petition was transferred from High Court to the Tribunal, and both the matters were clubbed together and a common order dated 24.11.1987 was passed with the result of dismissal. Against which a SLP No.1213-14/1987 was filed and the same was disposed of with some observations. Thereafter, a Notification dated 8.9.1989 was issued for drawing up a panel of 120 persons for the post of "Khalasis" in C&W Workshop, Alambagh, Lucknow but some of the persons approached the Tribunal by filing OA No.69/1990, against their exclusion from the panel but the same was dismissed. Aggrieved persons have filed Civil Appeal No.865-66/1992 before the Hon'ble Supreme Court and the same was disposed of on 14.02.1992, with a direction to include the names of

the applicants in fresh panel. Subsequently, similarly situated persons also approached the Tribunal by filing batch OAs in O.A.No.391/1992, 145/1995 and 20 other OAs for extending of the aforesaid benefit of Apex Court and the same was allowed vide order dated 15.02.2000 (Annexure-A-3). Thereafter, the applicants have preferred Contempt Petition No. 35/2000 on the ground that no offer of appointment has yet been given to them inspite of the decision and order of the Tribunal dated 15.2.2000 but the respondents opposed the same on the ground that in C&W Workshop, vacancy of Khalasis is not available, therefore they cannot be accommodated in the said workshop. In the meantime, efforts were made and vacant posts were searched-out in the same pay scale or higher to it by 1st Respondent i.e. General Manager.

6. It is relevant to point out that a panel of 146 Safaiwala was also notified in the same workshop but could not be operated due to non-availability of the posts. The aforesaid persons also approached the Tribunal for issuing of appointment orders, then the Respondent No.1 searched such posts at Jodhpur Division and offered appointment to all the 146 Safaiwala and they all accepted the appointment order without any protest and joined on that division and getting all the admissible benefits as per their turn.

7. Likewise, the panel in which the applicants were included it was decided to appoint them at "Delhi Division" as there were number of vacant posts of "Gangman" in existence. In pursuance thereof all the incumbents were offered appointment and appointment orders were sent to them including applicants. But they did not join on



the said post. Annexure-A-1 is the order dated 27.08.2001 offering the post of "Gangman" in "Delhi Division" to the applicants. Now the applicants have filed an O.A. questioning the validity and correctness of the offered post of "Gangman" and also appointment in "Delhi Division" with a prayer to strike down the same and provide appointment to the applicants on the post of "Khalasis" in the "C&W Workshop, Alambagh, Lucknow" only with all consequential benefits.

8. Annexure-A-3 dated 15.02.2000 is the common order and judgment in batch matters in O.A.No.391/1992 and 21 other matters. O.A.No.145/1995 is also one of the matters in that batch matter. The applicant no.1 herein was the applicant in O.A.No.419/1996 wherein the applicant no.2 herein was the Ist applicant in O.A.No.26/1998, which were decided alongwith batch matters in common judgment vide order dated 15.02.2000 (Annexure-A-3). The operative portion of the common judgment reads as follows:-

"In the result, in the conspectus of facts and circumstances, the applications are disposed of with the following directions:
"The respondents shall issue orders of appointment to all the applicants in these case who have pressed their claim on the post of Khalasis, without subjecting them to any further process of selection, in their turn on the basis of their seniority position in the panel dated 22.5.1984 towards existing vacancies and arising vacancies as expeditiously as possible considering the fact that their claims have been hanging fire for a very long time, after observing the pre-appointment formalities as per rules. No order as to costs."

9. The applicants herein along with others who are applicants in batch matters dated 15.02.2000 filed C.C.P.No.35/2000 (Annexure-A-6) and also execution petitions which ended in dismissal.

10. Annexure-A-6 is the copy of order in C.C.P.No.35/2000 in OA.No.145/1985 dated 19.08.2002, which ended in dismissal and while dismissing the CCP, the Tribunal observed as follows :-

“order dated 15.02.2000 passed in batch of OAs, including O.A.No.145/1995 did not provide that the applicants be accommodated in C&W Workshop, Alambagh, Lucknow. Therefore, as regards the claim of the applicants that they should have been accommodated in the “C&W Workshop, Alambagh, Lucknow”, we are of the view that the claim of the applicants has to be rejected. The contention raised by the applicants that they are prepared to remain out of job till such time as they can be accommodated and posted in “C&W Workshop, Alambagh, Lucknow” also has no merit and therefore cannot be accepted. In so far as the directions contained in the order dated 15.02.2000 passed in a batch of OAs including O.A.No.145/1995 are concerned, we are of the view that the directions have been complied with thus, the CCP therefore, fails.”

11. Thereafter, the applicants have filed execution petition M.P.No.2649/2002 in CCP No.35/2000 in O.A.No.145/1995 for taking action against the respondents under Section 195 and 340 of Criminal Procedure Code 1973 on the ground that they gave false and fabricated evidence but the same was also dismissed. The applicants also filed M.P. No. 2650/2002 in C.C.P. No. 35/2000 in O.A.No.145/1995 for recall of order dated 19.08.2002 passed in C.C.P. but the same was dismissed on 2.5.2003. Thus the order in C.C.P.No.35/2000 in O.A.No.145/1995 dated 19.08.2002 has attained finality.

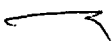
12. The respondent authorities have offered appointment on the post of “Gangman” to the applicants in “Delhi Division” vide impugned order / letter dated 27.08.2001 but the applicants did not join on the said post and filed the present OA, claiming that they should be posted at “C&W Workshop, Alambagh, Lucknow” that too on the post of “Khalasis” with a prayer to strike down the post of “Gangman” and “division” in the offer of appointment letter dated 27.08.2001 (Annexure-A-1) with a direction to appoint them on the post of “Khalasis” at “C&W Workshop, Alambagh, Lucknow.”

13. Respondents have taken main objection on the ground that the applicants are trying to enforce the judgment dated 15.02.2000 (Annexure-A-3) by way of present OA, like execution petition and as such OA is not maintainable. They also further stated that the claim made in the present OA is similar to the claim made in earlier OAs and as such the present OA is barred by Res-judicata and also on the ground of limitation.

14. In view of the rival contentions, the main point for consideration is whether the applicants are entitled to appointment on the post of "Khalasis" in "C&W Workshop, Alambagh, Lucknow" and also whether the offer of appointment letter dated 27.08.2001 (Annexure-A-1) requires corrections and amendments as claimed by the applicants.

15. The applicants are claiming the relief to issue direction to the respondents to allow the applicants to join on the post of "Khalasis" in "C& W workshop, Alambagh, Lucknow" with all entitled benefits as indicted in the judgment dated 15.2.2000 (Annexure-A-3) and thus, seeks to strike down the post of "Gangman" and "division" offered in the offer of appointment letter dt.27.8.2001 (Annexure-A-1).

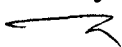
16. It is an undisputed fact that these applicants are also applicants in the said batch matters vide judgment dated 15.2.2000. The applicants alongwith others also filed Contempt Petition i.e. C.C.P.No.35/2002 in O.A.No.145/1995 but the same was dismissed on 19.8.2002 (Annexure-A-6). Thereafter, they also filed recall of C.C.P. order in M.P.No.2650/2002 in C.C.P.No.35/2002 and another M.P.No.2649/2002 to prosecute the respondents on criminal charges



on the ground that they filed false and fabricated evidence but those petitioners were dismissed on 2.5.2005.

17. If the applicants want execution of benefits of order in batch matter in O.A.No.391/1992 dated 15.02.2000 (Annexure-A-3), they are justified to seek benefit by way of filing execution petition or C.C.P. and there is no need to file separate OA and filing of fresh OA on same relief is not maintainable. The question of seeking extension of benefit of the judgment by way of separate OA lies, if the present applicants are not parties in the earlier disposed batch OAs. Undisputedly, these applicants are also applicants in the batch matters in O.A.No.391/1992 and 20 other OAs dated 15.2.2000 (Annexure-A-3) and in such circumstances, the claim of such applications, by way of this OA for execution of benefits in batch OA's dated 15.2.2000 (Annexure-A-3) is not at all maintainable.

18. Coming to the offer of appointment letter dated 27.08.2007 (Annexure-A-1) under which the respondent authority offered appointment to the applicants on the post of "Gangman" in "Delhi Division" on the ground that there are no vacancies in "C&W Workshop, Alambagh, Lucknow" for which there was notification, the applicants have not placed any material to substantiate that still vacancies are available at "C&W Workshop", "Alambagh", Lucknow on the post of "Khalasis", for finding fault with the authorities. Because of non-availability of such posts, the authorities have provided alternative appointment in the cadre of "Gangman" in "Delhi division" and in such circumstances finding fault with the authorities is not at all justified. Without any of the valid and justified grounds



the applicants are not justified in challenging the offer of appointment letter dated 28.07.2001 (Annexure-A-1) to strike down the post of "Gangman" and also the place of posting in "Delhi division" and it is up to the applicants to accept or reject such offer of appointment made by the respondents.

19. In view of the above circumstances, there are no justified grounds for interference of the Tribunal either in respect of offer of appointment made in letter dated 28.07.2001 (Annexure-A-1) either to for strike down the post of "Gangman" of "Delhi division" or to issue direction to the respondents for their appointment on the post of "Khalasis" in "C&W Workshop, Alambagh, Lucknow" and as such the OA is liable for dismissal.

20. In the result, OA is dismissed. No order as to costs.

Amit 15/7/10
(DR. A.K. MISHRA)
MEMBER (A)

M. Kanthiah
(M. KANTHAIAH)
MEMBER (J)
15-04-10

/amit/