

(By Advocates Mr. L.P. Shukla
Mr. K.N. Viswakarma (for applicants)

&

Mr. A.K. Chaturvedi
Mr. S. Verma (for respondents)

The applications having been heard on 10.2.2000, the Tribunal on 15.2.2000 delivered the following:

ORDER

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicants in all these cases have common grievance. The facts in all these cases are similar with some difference in the dates etc. However, as vital issue involved in these cases are identical these applications are being heard and disposed of by this common order.

2. On the basis of a policy of the Railways to give preference in employment to the sons and wards of the serving/retired railway employees a panel was prepared on 22.5.84 after subjecting the candidates for a screening. All the applicants were included in the panel and were awaiting appointment. While so, the second respondent by his order dated 3.1.85 without any notice to the applicants cancelled the panel without assigning any reason. A notice was issued on the same date i.e., on 3.1.85 inviting applications to empanel 127 persons as Khalasis. Aggrieved by the cancellation of the panel and apprehending that the vacancies would be filled on the basis of the fresh notification issued some of the persons who were in the panel filed Writ Petition No.590/85 in the Hon'ble High Court of Judicature, Allahabad at Lucknow Bench. Many similarly situated filed original applications before this Tribunal as O.A.500/86. The Writ Petition No.590/85 titled Mohd. Asfaq and others Vs. Union of India and others was

transferred to this Tribunal on the commencement of the Administrative Tribunals Act. Again respondent No.2 issued a notification on 4.5.86 inviting applications for the purpose of preparing a panel of 250 Khalasis in the C&W Workshop. The applicants in the above Writ Petition 590/85 filed a Miscellaneous Application for staying the selection of Khalasis on the basis of the aforesaid notification. However, no stay order was issued. In the Writ Petition No.590/85 the Department took the contention that on account of a ban notified by the Railway Board on 15.3.84 the panel dated 22.5.84 was cancelled. The Original Application No.500/86, however was dismissed by the Tribunal by its order dated 24.11.87. The applicants in that case approached the Hon'ble Supreme Court challenging the dismissal of the Original Application. The Hon'ble Supreme Court recording the submission made by the learned Additional Solicitor General disposed of the SLP 1213-14/85 with the following orders:

"Heard learned counsel for the parties. Special Leave Petitions are dismissed. We make it however clear on the statement made to the Court by learned Additional Solicitor General that the bar of age would not be raised against any of the petitioners when a fresh panel is prepared. This is so as explained by Additional Solicitor General in view of the fact that the petitioners have already been in panel and that panel has been cancelled without giving notice to them. The concession made by ASC shall operate in respect of two consecutive advertisements for employment."

After the above order of the Hon'ble Supreme Court a notice dated 8.9.89 was issued by the respondents for the purpose of drawing up a panel of 120 persons for filling up the posts of Khalasis in the C&W Workshop in which the applicants were also allowed to participate. However, ignoring the fact that the applicants had been earlier selected and empanelled after subjecting to the same test which was being held, the

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applicants were further interviewed and put to test according to the applicants with a view to exclude them arbitrarily from the panel. When some of the persons whose names were there in the panel dated 22.5.84 were not called to participate in the selection and were excluded from consideration a batch of applications including OA 69/90 (Dharmendra Kumar Nigam and others vs. Union of India) were filed which were disposed of by a common judgment dated 20.5.91 by the Tribunal holding that as the applicants therein did not fulfil all the conditions specified in the notification dated 8.9.89 there was no violation of the directions of the Hon'ble Supreme Court dismissed the applications. Against the said Judgment of the Tribunal dated 20.5.91 the applicants Dharmendra Kumar Nigam and others filed Civil Appeal No. 865-66/1992. The Apex Court on 14.2.92 disposed of these Appeals with the following orders;

"Special Leave Petition on behalf of the petitioner No.2 Uma Singh Pal is not pressed and is dismissed as such.

Heard the learned counsel for the parties. Special Leave is granted.

The appellants who are 25 in number, claim priority to matter of employment in the Railways on the ground of being sons of Railway Employees on the basis of a policy decision which is being followed in the Department. For that purpose a panel was prepared in 1984 including the appellants and the same was cancelled subsequently without notice to them. Another panel was later prepared in 1989 in which the appellants are not included. They, after challenging the same before the Central Administrative Tribunal unsuccessfully, approached this Court with Special leave petitions being S.L.P.(C) Nos.1213-14 of 1988. The matter was disposed of by the order of this court dated 8.9.88., as contained in Annexure.P.1 directing reconsideration of their cases after ignoring the age bar. Consequently another panel was prepared, but again the appellants could not find place therein. The appellants once more moved fresh petitions before the Tribunal which were dismissed

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by the order under challenge.

4. In reply to a query by the Bench, the learned counsel for the respondents stated that the appellants were entitled to the claim of priority in the year 1984 when the first panel was prepared. He has, therefore, contended that since the appellants has not filed their applications through the employment exchange, the claim could not be considered. We have examined the relevant facts and circumstances of the case and are of the view that having regard to the earlier order passed by this Court and the nature of the claim of priority based on compassionate grounds, the refusal to consider the appellants claim for the sole reason that the applications had not been sent through the employment exchange was not justified. Accordingly we direct the respondents to include the names of the appellants in the fresh panel.

5. Mr. R.K.Jain, learned counsel for the appellants has drawn our attention to the earlier order of this Court requiring the respondents to state whether sufficient number of vacant posts are available against which the appellants, in case of their success can be accommodated. The learned counsel for the respondents concedes that vacancies do exist. An additional affidavit has been filed stating that there are in existence 43 vacant posts at present. After taking into account all the relevant circumstances in the case including the considerable delay disposing of the claim of the appellants, we direct the Railway authorities to treat the appellants as claimed by them, and then consider them along with the other applicants, if any, belonging to the same category as the appellants and having similar preferential claim, and pass appropriate orders of appointment to the existing vacancies expeditiously preferably within two months from today. The appeals are accordingly allowed but in the circumstances without costs."

The applicants in all these cases claim parity with the

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appellants in Civil Appeal Nos.865-66/1992 on the ground that the judgment in this case apply to them also as they are persons identically situated having a preferential right in appointment. Some of them made representations. Finding that they are not being given the benefit/approached the Tribunal with the present applications. The Original Applications were filed during the years 1992 to 1998. In some of the Original Applications, the applicants prayed for quashing the notice dated 2.2.94 forming a panel of 149 temporary Khalasis in the grade Rs.750-940. In most of the applications the applicants prayed that the respondents be directed to appoint the applicants on the post of Khalasis on the basis of their selection and empanelment dated 22.5.84 in terms of the orders of the Hon'ble Supreme Court in Civil Appeal No.865-66/1992.

3. The respondents in all these cases have filed reply statements. They have raised the plea of limitation. They have also contended that the applicants in T.A.1705/97, O.As 30/90 and 69/90 in favour of whom the Hon'ble Supreme Court has given the order dated 14.2.92 were persons who were not called for selection while the applicants were called for selection and failed and therefore, the applicants cannot claim parity with them and their claim based on the ruling of the Supreme Court dated 14.2.92 is unsustainable. Since the Writ Petition and the Original Applications filed by some of the applicants were dismissed ultimately by the Apex Court vide order dated 8.9.98 the applicants have no legitimate grievances deserving redressal, contend the respondents. The respondents have indicated that having regard
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to the direction of the Hon'ble Supreme Court in its order dated 8.9.88 notice dated 6.9.96 was circularted through letter dated 19.12.96 and the applicants have been directed to apply before 19.1.97. If they apply and have applied in time their cases would be considered for selection and appointment. They contend that in any case the applicants are not entitled to be appointed without undergoing a process of selection.

4. The applicants have filed rejoinder. That the stand of the respondents that the order of the Hon'ble Supreme Court dated 14.2.92 is not applicable to the applicants as the applicants had been called for selection while the appellants before the Hon'ble Supreme Court were persons who had not been called for selection is unsustainable for the Tribunal has in the case of Rajendra Kumar Shukla and others Vs. Union of India (OA 146/90) even though the applicants in that case had similarly been called for selection but not empanelled gave the following directions:

"We make it clear that the applicant shall also be given appointment as and when vacancy arises in accordance with the seniority and the fact that the applicant has become over age and that the applicant has not been a party to any application earlier will not stand in his way. With these observations the application stands disposed of finally. In case any vacancy arises, the applicant will be given appointment against the existing vacancy. No order as to costs."

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5. We have perused the pleadings and other materials and have heard Shri L.P.Shukla and K.N.Viswakarma, learned counsel on behalf of the applicants and Shri A.K.Chaturvedi and Shri S.Verma on behalf of the respondents. The learned counsel of the applicants with considerable tenacity argued that as the applicants in all these cases are identically situated as the appellants before the Hon'ble Supreme Court in Civil Appeal No.1213-14/85 and belong to the same priority class, the respondents are bound to consider the applicants also for appointment without subjecting them to any further selection as they had already been selected and empanelled on 22.5.84 which panel was cancelled arbitrarily without notice. Shri Chaturvedi and Shri S.Verma, learned counsel appearing for the respondents with considerable vehemence argued that the application filed against the cancellation of the panel dated 22.5.84 (OA.500/86 and OA 206/87) having been dismissed and the SLP filed against these orders also having been dismissed by the Apex Court vide Judgment dated 8.9.88 the only concession to which the applicants would be eligible is for consideration for selection without age bar being held against them in the next two advertisements. The claim of the applicants for appointment without any selection on par with the appellants before the Supreme Court in Civil Appeal No.1213-14/85 argued the counsel. has no merit at all! At the first blush the argument of the learned counsel would appear to have force because in the first sentence of the order the Hon'ble Supreme Court has stated that the petitions are dismissed as also because it has not been indicated in the order that in

respect of two consecutive advertisements they would be considered for employment without subjecting to any selection. But it cannot be seriously contended that the applicants would not be entitled to the same benefit as was given to the appellants before the Hon'ble Supreme Court in Civil Appeal Nos.965-66/1992 because the conclusion of the Hon'ble Supreme Court is as follows:

"We have examined the relevant facts and circumstances of the case and are of the view that having regard to the earlier order passed by this court and the nature of the claim of priority based on compassionate grounds, the refusal to consider the appellants claim for the sole reason that the applications had not been sent through the employment exchange was not justified. Accordingly we direct the respondents to include the names of the appellants in the fresh panel.

5. Mr. R.K.Jain, learned counsel for the appellants has drawn our attention to the earlier order of this court requiring the respondents to state whether sufficient number of vacant posts are available against which the appellants, in case of their success can be accommodated. The learned counsel for the respondents concedes that vacancies do exist. An additional affidavit also has been filed stating that there are in existence 43 vacant posts at present. After taking into consideration all the relevant circumstances in the case including the considerable delay disposing of the claim of the appellants, we direct the Railway authorities to treat the appellants as claimed by them, and then consider them along with the other applicants, if any, belonging to the same category as the appellants and having similar preferential claim and pass appropriate orders of appointment to the existing vacancies expeditiously preferably within two months from today. The appeals are accordingly allowed but in the circumstances without costs."

(emphasis added)

The preferential claim of the appellants before the Hon'ble Supreme Court was based on the facts that they were sons and wards of serving/retired employees on the basis of a policy evolved by the railway administration on compassionate grounds.

Therefore, it is futile to contend that the applicants in these cases who belong to the same category as the appellants before the Hon'ble Supreme Court belonging to the same preferential class, even though the applicants have not

filed any other applications earlier and though the SLP

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1213-14/85 was dismissed they also are entitled to same treatment as the appellants in Civil Appeal No.865-66/1992. It is meaningless to contend that the appellants before the Hon'ble Supreme Court who were not called for selection process are in any way better placed than the applicants who also fall within the same preferential category and like them. who were earlier placed in the panel dated 22.5.84. It is taking notice of these facts and circumstances that this Tribunal in CA.146/90 (R.K.Shukla and others Vs. Union of India and others) directed the respondents to give appointment to the applicants as and when vacancy would arise in their turn even though they had not filed any claim or applications earlier. The learned counsel of the respondents argued that a Review Application has been filed against the order in C.A.146/90 and that therefore the order has not become final. We have this day dismissed the Review Application and therefore, this argument has no force. Further, we are informed that the persons who were applicants in C.A.146/90 have already been given appointments. As the applicants in these cases are in all respects identically situated like the applicants in C.A.146/90 which has become final as the SLP filed against the same has also been dismissed, there is no grace in the contention of the respondents that the applicants in these cases would not be entitled to the similar treatment.

6. Learned counsel of the respondents stated that in response to the notice issued on 6.9.96 some of the applicants have applied and some have not applied for selection. The selection according to the respondents is

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not confined to the persons who were placed in the panel dated 22.5.84 and is open for direct recruitment and applicants also will have to compete with them. In view of the direction in the order of the Hon'ble Supreme Court in Civil Appeal Nos.865-66/1992 dated 14.2.92 the applicants and those who were placed in the panel are entitled to be offered appointment in the existing vacancies or in vacancies which would arise without any further selection. Therefore, we are of the considered view that the respondents are bound to offer to the remaining persons in the panel dated 22.5.84 including the applicants appointment towards vacancies existing or would arise in future on the basis of their seniority in the said panel.

7. In the result, in the consequent offacts and circumstances, the applications are disposed of with the following directions:

"The respondents shall issue orders of appointment to all the applicants in these cases 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 22.5.84 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."

Dated the 15th day of February, 2000

J.L. NEGI
ADMINISTRATIVE MEMBER

A.V. HARIDASAN
VICE CHAIRMAN

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10/21/2000*