

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 744/96

Date of Decision : 22<sup>nd</sup> October '01

R.C.Bhakare & Ors.

Applicant

None

Advocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.R.Shetty

Advocate for the  
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri V.K.Majotra, Member (A)

(i) To be referred to the reporter or not ? NO  
(ii) Whether it needs to be circulated to other NO  
Benches of the Tribunal ?  
(iii) Library yes

*S.L.Jain*  
(S.L.JAIN)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA. NO. 744/96

Dated this the 22<sup>nd</sup> day of October 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri V.K.Majotra, Member (A)

1. Ramesh C.Bhakare
2. Chandrakant N.Pingale
3. Sanjao P. Dubre
4. Narendra B.Bhoire
5. John F.Lopes
6. Anil M.Pawar
7. Vinod M.Dalvi
8. Vijay S.Jain
9. Arun B.Kadam
10. Kundlik S.Rokade
11. Arun P.Baglare
12. Ramesh G.Kadam
13. Bharat V. Dhaitate

Applicants

All are Khalasis working  
in Matunga Workshop,  
Central Railway,  
Matunga, Mumbai.

By Advocate none.

vs.

1. Union of India through  
The General Manager,  
Central Railway HQs.,  
CST, Mumbai.
2. The Divisional Railway Manager,  
Mumbai Division,  
Central Railway HQs.,  
C.S.T., Mumbai.
3. The Deputy Chief Electrical  
Engineer (EMU/POH),  
Matunga Workshop,  
Central Railway,  
Matunga, Mumbai.

... Respondents

By Advocate Shri R.R.Shetty

S. V. R.

..2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that the selection process initiated by the respondents in terms of their employment notice No.MB.P.202.G ELDR dated 8.12.1995 is null and void, with a direction to the respondents to withhold the selection/appointment process in progress, promote/appoint the applicants to the post of Skilled Artisans in the vacancies at present available vide Notice dated 8.12.1995, restraining the respondents from making direct recruitment to the 13 posts of Skilled Artisans who hold I.T.I. certificates in various trades, recruited in 1985-1986 are absorbed/promoted/appointed in the post of Skilled Artisans against 8.12.1995.

2. The applicants are holding ITI certificates and possessed the qualification required for the post of Skilled Artisans. In view of selection held in the year 1985 for direct recruitment to the post of Skilled Artisans Cadre in Class III, the applicants applied for the post of Skilled Artisans, after the scrutiny, the respondents issued the call letters in the month of October, 1985, the applicants appeared for the test and viva voce and the result was declared. The respondents selected about 300 candidates for appointment to the post of Skilled Artisan. The applicants were sent for medical examination. The respondents

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appointed some of the selected candidates on the basis of the select list prepared for the cadre of Skilled Artisans against the vacancies available. The selected candidates were appointed in batches in the year 1985, 1986 and 1987 but the applicants were not appointed.

3. In the year 1995, there were about 288 vacancies in the posts of Skilled Artisan. The respondents have filled about 216 posts, 144 posts by promotion on the basis of seniority irrespective whether the employees concerned hold ITI certificate in various trades or not, without holding any kind of test. 72 posts by promotion of ITI certificate holders on the basis of there inter-se seniority without any kind of test. For the purpose of filling up the 72 posts of Skilled Artisans, the respondents issued Employment Notice No.MB.P 202.G.ELOR, dated 8.12.1995 inviting applications from rank outsiders who possessed the qualification prescribed for the posts of Skilled Artisan. Applications were also invited from the eligible existing Khalasis who have passed S.S.C. prescribed for the outsiders and also I.T.I. certificates in specified trades.

4. The grievance of the applicants is that the respondents had disputes pending raised by the Unions Workmen regarding balance vacancies in Skilled Artisans cadre. The respondents orally took consent from the applicants for temporary accommodation against the lower post till the clearance of the Administration for filling Class III vacancies. As per the assurance applicants though selected on the basis of their

performance and qualification for direct recruitment against Skilled Artisans grade were adjusted as Khalasis. After their appointments to the posts lower than those for which they were considered and selected, no recruitment was resorted by the respondents till 1995. Since 1986 onwards large number of vacancies in the posts of Skilled Artisan occurred by the respondents but they failed to keep the promise given by them though oral at the time of appointments of the applicants. The said remaining 72 posts are to be filled by the respondents by direct recruitment without considering the claims of the applicants both on the basis of their selection in 1986 to the posts of Skilled Artisans and on the basis of the promises given by the respondents at the time of their appointments to the lower posts in 1986. The applicants to save the respondents from embarrassing situation in which they found themselves in the year 1986, accepted the lower posts and even after lapse of 10 years, they are continuing as Khalasis without any promotion. The applicants claim that though there were vacancies in the Skilled Artisans, they were not promoted. In view of fresh advertisement dated 8.12.1995, the direct recruitment is resorted. The respondents have discriminated and violated Article 14 of the Constitution. They are carrying out the duties of the skilled posts. By initiating the process of direct recruitment in the posts to which the applicants have legitimate claim, the respondents have blocked the promotional avenues of the applicants. Hence, this OA. for the above said reliefs.

PGH

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5. The respondents have resisted the claim of the applicants and alleged that they are not entitled to file a joint application as there is no common order against any of them, Application is misconcieved, does not disclose any cause of action, the particulars of alleged assurance or promises not given, allegations are vague and false to the knowledge of the applicants. The applicants have suppressed the material facts and have not come with the clean hands. It is not true that there has been no appointments to skilled artisans since 1986. The applicants were not declared successful and fit for Class III post in the year 1985. Only 72 vacancies were to be filled. The persons who were not selected could not have any claim for posting and were not entitled to be posted against the direct recruitment quota for Class III. The selected candidates were appointed on the basis of the merit list and all the posts mentioned in the Employment Notice were duly filled in. There was no dispute raised by Union as alleged by the applicants or even otherwise regarding balance vacancies. As there were some vacancies available in Class IV post such of the candidate who were not selected and posted in Class III were offered the Class IV post which they accepted on their own violition. Such candidates were sent for medical examination for Class IV posts. No assurance was given to any candidates as alleged nor they were selected for Class III posts as alleged, the question of adjustment does not arise. The applicants were appointed as Class IV employees. The method of appointment to Class III

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artisans post is 50% by promotion from departmental employees, 25% from serving employees with ITI training and 25% from direct recruitment by candidates having requisite qualification. The applicants are only entitled to be appointed as skilled artisan grade III either on promotion as per seniority against 50% departmental quota or could apply for selection against 25% quota of serving employees with ITI training, or again apply for selection for open market quota. The applicants applied for 25% vacancies but they were not selected for promotion against said quota. There was no question of any promise or assurance to be made to the applicants as no such promise was made or would have made as this would be against rules and provisions of Indian Railway Establishment Manual. The applicants have made false statement knowingly and without any particulars. No person is authorised to make any such promise or give any such assurance. In the year 1995 while filling the vacancies, the respondents acted according to rules. Employment Notice dated 8.12.1995 was issued to fill up balance 25% posts from direct recruitment from open market. The applicants could have applied for the posts and get themselves selected for the same. The applicants can not claim any preferential treatment or out of turn promotion. It is the right of the respondents to prescribe qualifications to secure duly qualified, fit and proper persons through selection in order to get proper and well qualified trained personnel for carrying out their work and the applicants cannot raise any objection or make any grievances against the same. Hence, prayed for dismissal of the OA. along with cost.

DXM -

.7/-

6. The applicants remained absent on the date of hearing and none appeared for them. We have heard the respondents' counsel.

7. From perusal of the pleadings of the parties and the rules on the subject, we are of the considered opinion that the grievances of the applicants have no legitimate foundation and the action of the respondents is as per their Recruitment Policy. We are unable to find any fault in the action of the respondents. As such there is not merit in the OA.

8. The respondents' counsel brought to our notice and submitted a list stating that later on the applicants were also promoted against the dates shown each of them.

9. The learned counsel for the respondents relied on an order passed by this Bench in OA.NO.561/97 decided on 26.9.2001. We are of the opinion after considering the said order that it has no relevance to the issue involved in the present case.

10. In the result, OA. has no merit, it is liable to be dismissed and is dismissed accordingly with no order as to costs.

V.K.Majotra  
(V.K.MAJOTRA)  
MEMBER (A)

S.L.Jain  
(S.L.JAIN)  
MEMBER (J)

mrj.