

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

CORAM; Hon'ble Mr.A.S.Sanghavi - Member (J)  
Hon'ble Mr.Shankar Prasad - Member (A)

Dated this Monday the 7th day of April, 2003

O.A.981 OF 1999

1. Laxman Singh Champalal
2. Rafiq Khan Gulab Khan
3. Jayantilal Ranchhod
4. Komalsingh Lallusingh
5. Santosh Ramjilal
6. Ravishankar Shree Singh
7. Ashok Kisan
8. Jagannath Kondu
9. Alam Mehboob
10. Domulsingh Durgasingh
11. Gangadhar Purshottam
12. Kishore Mangilal
13. Chunnilal Daulatsingh
14. Kashiram Juje
15. Makhanprasad Ramprasad
16. Gangaprasad Ramprasad
17. Ms.Geetabai Shivakaran
18. Ms.Kokilabai Vishwanath
19. Mahesh Moolchand
20. Mahesh Baliram
21. Ramesh Tukdu
22. Ganesh Balanna
23. Vishnu Mitha
24. Ramdas Champalal
25. Dhannalal Babulal
26. Ramdhar Shivprasad
27. Pralhad Surjoo
28. Shantaram Dayaram
29. Suresh Shankar
30. Yogiraj Jagganath
31. Mohan Devtadeen
32. Kruparam Hemraj
33. Bhagwati Prasad
34. Keshav Mangilal
35. Bhagirath Gendalal
36. Arun Mahadev

(All Applicants are working as  
Khalasis under Dy.Chief Engineer  
(Const.), Bhusawal, at Khandwa).

(All Applicants are residents of  
Suraj Kund Railway Colony, Behind  
Church, Mhandwa (M.P.)

(By Advocate Shri S.V.Marne with  
Shri D.V.Gangal)

- Applicants

.....2/-

Versus

1. Union of India  
through the General Manager,  
Central Railway, CST, Mumbai.
2. Chief Engineer (Const), -  
North Central Railway,  
CST, Mumbai.
3. The Deputy Chief Engineer (C),  
Central Railway, Bhusawal.
4. Divisional Railway Manager,  
Bhusawal Division, Central Railway,  
Bhusawal.
5. Divisional Engineer (North),  
Central Railway, Bhusawal.
6. Assistant Engineer (Line),  
Central Railway, Bhusawal.
7. Executive Engineer (C),  
Central Railway, Khandwa (M.P.)  
(By Advocate Shri S.C. Dhawan)

ORAL ORDER

By Hon'ble Mr. A.S. Sanghavi, Member (J) -

The Applicants were Casual Labourers working as Khalasis and were regularised as Gangman on different dates. Most of them are regularised as Gangmen between the period 1991 to 1997, as can be seen from the statement annexed at Annexure-A-7. Their grievance is that they do not want to work as Gangmen and want to continue to work as Khalasi. According to them, they had never opted to work as Gangmen and against their wishes they have been regularised as Gangmen. Shri Gangal, learned counsel for the Applicants has submitted that the Applicants have ~~now~~ worked as Gangmen and have continued to work as Khalasi right from the inception of their service. They have resisted the attempts of the Respondents to post them as Gangmen and when the Respondents had issued some orders to post them as Gangmen they had moved

this OA restraining the Respondents from passing any orders posting them as Gangmen. They have maintained that the Respondents should allow them to work as Khalasis in Khandwa.

2. The Respondents in their reply have contended inter alia that after due screening the Applicants were regularised as Gangmen and as such they are Gangmen and not Khalasis. When they are regularised as Gangmen they are required to be posted as Gangmen and they cannot say that they cannot be employed as Gangmen and work of Gangmen cannot be taken from them. It is also contended by the Respondents that they, were regularised as Gangmen in BSL Division and transferred to Construction organisation at their own request and that they are having their ~~lien~~<sup>lien</sup> with Divisional Railway Manager (Works), BSL. It is also contended that the Applicants have accepted the regularisation and after accepting the regularisation as ~~General Manager~~<sup>gangmen</sup>, they had requested that they be allowed to ~~work~~ in Construction organisation. On their request they were transferred to work under Respondents 2, 3 and 7 only on temporary basis and posted against Work Charged post. It is also one of the contentions that Respondent no.3 has surrendered 50 Nos. of Group 'D' staff, working under Dy.CE (C) BSL by order No.68/1999 and in view of surrender of these posts there is no vacancy or work under the Deputy Chief Engineer. They have denied that the regularisation of the Applicants as Gangmen is illegal or irregular and have contended that the Applicants cannot now be heard to say that they should be allowed to work as Khalasis only.

3. We have heard the learned counsel of parties and duly considered the rival contentions.

4. It is an undisputed position that Applicants were engaged as Casual Labour - Khalasis and after putting up some years of work, they have been awarded temporary status as well as regularisation in their service. The bone of contention between the parties is that the regularisation of the Applicants is on the post of Gangmen while the Applicants claim that they should have been regularised as Khalasis as they were engaged as Khalasis and they were working as Khalasis. According to the Respondents once the Applicants were regularised as Gangmen and they had accepted the same, they cannot turn back and say that they ~~had~~ <sup>ought to have</sup> not even been regularised as Gangmen.

5. Shri Gangal learned counsel for the Applicant has submitted that the Applicants have never been paid the salary of Gangmen and that all throughout they have continued to work as Khalasis. According to him though they were regularised as Gangmen, they have ~~now~~ <sup>never</sup> worked as Gangmen and no work of Gangmen was also taken from them. Since they were allowed to work as Khalasis and were paid the salary of Khalasis, the Respondents cannot now ask them to work as Gangmen. On the other hand Shri Dhawan, learned counsel for the Respondents has denied that the Applicants were paid salary of Khalasi and have asserted that

Applicants have been paid salary of Gangmen. According to him they have, after regularisation worked as Gangmen and have been deployed at <sup>different</sup> ~~other~~ places as Khalasis <sup>on their request</sup> ~~for such working~~.

6. Apparently the averments and the contentions raised by both parties <sup>are</sup> ~~is~~ questions of facts. Whether the salary of Khalasi or Gangman was paid to the Applicants, <sup>is</sup> ~~these are~~ questions which could have been easily established by producing necessary documents in this regard. Unfortunately, neither the Applicants nor the Respondents have adduced any evidence to show what salary was paid to the Applicants. Neither the pay slip of the Applicants are brought on record nor entries from the Payment Register were brought on record. The posting orders of the Applicants are also not on record. Under the circumstances, the only question that arises to be decided is whether the Applicants can refuse to work as Gangmen. It is undisputed position that the post of Gangmen is higher than that of Khalasi carrying higher pay scale than Khalasis post. The Gangmen is placed in the scale of Rs.775-1025/- while Khalasi in the scale of Rs.750-940/-. In view of this position even if the Applicants are regularised as Gangmen, they can always ask for reversion to the post of Khalasi. Their parent cadre was that of Khalasi. Since they were engaged as Casual Labour Khalasis they can always be reverted back as Khalasis if they make necessary demands in that regard. We find from some orders passed by the Respondents, that on such request made, the Respondents have already reverted

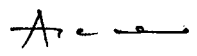
the Applicant no.1 Laxman Singh Champalal to the post of Khalasi as well as one Kishan Gyani vide order dated 1.12.1992. These orders clearly demonstrate that at least Applicant no.1 Laxman Singh Champalal and Kishan Gyani had made request to work as Khalasis and consequent to their request they have been reverted as Khalasis by the Deputy Chief Engineer (Construction), BSL. If the department had considered this to be in order, then we do not understand how the case of other Applicants can be discriminated or can be treated otherwise. The other Applicants are also asking for reversion to the post of Khalasis and we do not see any reason why they should not be reverted back as Khalasis if there is vacancy available. If a regular employee on higher post seeks reversion to the lower post, there is no rule which says that the Department can refuse to revert him. If the employees are unwilling to work on higher post and seeks reversion to lower post, such unwilling employee cannot be allowed to continue in the interest of the Administration even on a higher post, no doubt such orders should be subject to availability of vacancies. One more aspect raised by learned counsel for the Applicants is that none of the Applicants have been given training as Gangmen and since Gangmen is a post of a Safety category, the Applicants' request for reversion to the post of Khalasi cannot be turned down. We are not aware whether any training was given to the Applicants or not but when the Safety category post is involved and the employee is an unwilling or reluctant worker, it is in the interest of the Administration also that such unwilling worker should not be continued on the higher post, all the more when it is a Safety category post.

7. In view of the above discussion and in the facts and <sup>circumstances</sup> ~~situation~~ of the case, we direct the Respondents to accept the request of the Applicants for reversion to the post of Khalasi and pass necessary orders reverting them as Khalasis in the scale of Rs.750-940/-. They may be considered for regularisation on the post of Khalasi, if they were sufficiently senior, w.e.f. the date of their immediate junior was regularised. They also may be permitted to work as Khalasis. If anyone of them is posted as Gangmen, he may be reverted and posted as Khalasis, subject to availability of vacancies.

8. With the above directions, this OA stands disposed of. There will be no order as to costs.

  
(Shankar Prasad)  
Member (A)

mf

  
(A.S. Sanghavi)  
Member (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, MUMBAI**

**Dated this Monday the 15<sup>th</sup> day of June, 2009**

**Coram: Hon'ble Shri Justice A.S. Bagga - Member (J)  
Hon'ble Shri Sudhakar Mishra - Member (A)**

**Contempt Petition No. 34 of 2004**

**in**

**OA 981 of 1999**

**Laxman Champalal & ors.**

**(By Advocate Shri D.V. Gangal) - Petitioners**

**Versus**

**Shri S.B. Ghosh,  
General Manager,  
Central Railways,  
Headquarters Office,  
Mumbai CST, Mumbai.**

**Shri S.N. Marke,  
Dy. Chief Engineer (C.),  
Central Railways, Bhusawal.**

**Shri Divyakant Chandkar,  
Divisional Engineer (North),  
Central Railways, Bhusawal.**

**Shri S.K. Shukla,  
Executive Engineer (C.),  
Central Railways, Khandwa.**

**(By Advocate Shri S.C. Dhawan) - Respondent-  
Contemnors**