

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.528/2001.

DATE OF DECISION : 22.10.2003

Prasanna B. Panikar & Ors.	... Applicant.
Shri S.S.Karkera	... Advocate for the applicant.
Vs.	
Union of India & Ors.	... Respondents.
Shri R.R.Shetty	... Advocate for Respondents.

Coram: Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

1. To be referred to the reporter or not?
2. Whether it needs to be circulated to other Benches
of the Tribunal?
3. Library?


(S.BISWAS)

B.

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.528/2001.

, this the 22nd day of Oct ~ 2003.

Hon'ble Shri S.Biswas, Member (A),
Hon'ble Shri Muzaffar Husain, Member (J).

1. Prasanna B.Panikar,
2. R.S.Jaiswar,
3. Hemant R.Mahatre,
4. Sunil Gangurde,
5. Ramesh .T.,
6. L.B.Patil,
7. Rajendra Kamble,
8. Mahesh M.Vasvani,
9. Pramod Bhise,
10. Rajendra Karne,
11. Joseph L.Chakkuria,
12. Gaikwad Vivekanand .S.
13. Dashrath Panchal,
14. Santosh V.Nevrekar,
15. Shrikesh Bhosle,
16. Maruti Kamble,
17. Ravindra J.Vaval,
18. L.T.Dhuri,
19. Ashok Desai,
20. Paresh B. Bharucha,
21. Sanjay S.Kelshikar,
22. Shyam Narayan Sharma,
23. Gautam S.Gaikwad,
24. Uttam J.Vaval,
25. Ashok Kori,
26. Jainendra Singh,
All are working as Tool Checkers in
Parel/Mahalaxmi Workshop Unit
of Western Railway Mumbai.
C/o. Sanjay S.Kelshikar,
105 B/2 Dulhan B.Kasam Chawl,
S.L.Matkari Marg, Elphinstone Road,
Mumbai - 400 025.Applicants.
(By Advocate Shri S.S.Karkera)

v.

1. The Union of India, through
The General Manager,
Western Railway, Churchgate,
Mumbai - 400 021.
2. The Chief Personnel Officer,
O/o. The General Manager,
Western Railway, Churchgate,
Mumbai - 400 021.

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3. The Chief Works Manager/Parel,
Carriage Repair Workshop,
Western Railway, N.M. Joshi Marg,
Lower Parel, Mumbai - 400 013. ...Respondents.
(By Advocate Shri R.R.Shetty)

: O R D E R :

{S.Biswas, Member (A)}

In this application under section 19 of the Administrative Tribunals Act, 1985, 28 applicants have sought for a direction upon the Respondent No.2 to prepare an integrated seniority list of Tool Checkers and Office Clerks so that promotional avenue opens up for them. In seeking the said relief the applicants have impugned the order dt. 03.07.2001 (Annexure - A) to the O.A. By this impugned communication issued by the Western Railway applications were invited from willing employees for filling up of vacancies of Tool Checkers with different graded experience in the scale of Khalasi Helper. The representation for preparation of integrated seniority for Tool Checkers with Ministerial Staff was turned down.

2. The necessary facts in the O.A. are that the applicants are initially appointed as Khalasis in the year 1983 and then they have become Tool Checkers and Material Collectors under the respondents. Despite several representations as quoted in the application, the prayer of the applicants for an integrated seniority list with the office grade clerks is not considered. In fact, the said representations have been rejected without any reasons.

3. We have heard the rival counsel on the facts and legal points. The Learned Counsel for the applicant, inter alia brought to our notice various orders enclosed to the application

which would show that similar facility of integrated seniority list of Tool Checkers in the scale of Rs. 260-400, as well as, the Clerk grade in the same scale are in vogue since 1982-83 (reference page 23 to the O.A.) in other Railways (Central Railways).

4. It is further seen that while replying to the representation, the respondent authorities have also submitted and admitted that Tool Checkers in the DLW, CLW and Eastern Railway, are separate cadre in the substantive grade to be seen at page 175 of the folder.

5. We have carefully gone through this application and pointed out by Learned Counsel for the applicant. We have also seen that the Deputy Director Pay Commission - III, Railway Board has suggested that "necessary action to fall in line with other Zonal Railways/Production Units presumably because the practice of merger of this category with Ministerial Cadre was already in vogue." In other words, while acknowledging the presence of such divergent practise regarding Tool Checkers cadre being a integrated cadre with Ministerial Staff in DLW, CLW and Estern Railways etc. and this cadre has been treated differently under the Western Railway as an ex-cadre post, this was definitely an affirmative proposal which we find has not yet been worked out. As the matter is pending, the applicants have filed this O.A. which is a second round of litigation. We have considered the submissions carefully. The limited issue involved in this case is whether the Western Railways can treat the Tool Checkers differently than all other Railways where the practise is in vogue. The applicants have got a good ground to claim parity of

Tool Checkers on the Western Railways with other Railways like DLW, CLW and Eastern Railways. In this connection, the Learned Counsel for the applicant also brought to our notice an order dt. 16th May/Mar, 1997 (not fully legible) whereunder, the Western Railway authorities have indicated the sanction strength of different cadres of semi-skilled re-classified as skilled grades. There is a further chart dt. 01.11.1997 attached to it which clearly shows that out of 35 different grades. Tool Checkers and Material Collectors are also finding place and their status could be that of a sanctioned strength.

6. The Learned Counsel for the respondents, however, took objection to the documents being filed without giving him a copy of the same which is done in the Court now. We have also gone through the particulars. The heading is "position of Artisans as on 01.11.1997". Though it does not mention that the Tool Checkers are ex-cadre post, but this truly does not help otherwise also. It is only showing the sanctioned strength of deployment. That case include ex-cadre posts as well - though not specifically indicated.

7. On the contrary, the Respondents have shown the Seniority List (Annexure - R-1). These are flow charts of different grades of parent cadres and their prospects of promotion. In other words, there is adequate scope for the parent cadre of Khalasis to be promoted to different streams as already stated earlier.

8. Though the respondent authorities have tried to avoid the question of merger as sought by the applicants, it is an acknowledged fact that the practice regarding how the Tool Checkers grade has to be equated with the Clerks for drawing up a

common seniority list is fraught with difficulties. Except one departmental communication where the Tool Checkers have been regarded as an ex-cadre post, neither the respondents nor the applicants are in a position to furnish the requisite Recruitment Rules to support their respective contentions. Therefore, in our view, both are at fault and have no documents to support their submissions.

9. We are, however, convinced that there is adequate promotional avenues to Khalasis as far as Western Railways are concerned. They have also been used as Tool Checkers in addition to their promotional channel and for further purposes they are drawing a higher pay scale over the Khalasis. The applicants grouse is that why they could not be merged with the similar grade like the clerks and Ministerial staff who are drawing the same scale of pay as they are drawing as Tool Checkers in the ex-cadre grade.

10. We have given careful consideration to the submission of the Learned Counsel for the respondents and are not able to agree that such a large number of posts under the designation of Tool Checkers are right through an ex-cadre grade without any supporting Recruitment Rules. Though it comes within the administrative policy framed by the authority of the Respondents, we find that a grade of ex-cadre post have been maintained in the department and same posts are held by Tool Checkers when the authorities have no recruitment rules to support this action and quite seriously there is a blatant disparity in the practise obtaining in other Railways vis-a-vis in the Western Railways and the treatment meted out to the Tool Checkers in the Western Railways is quite different and there is considerable force in

the submission of the applicants seeking a parity on the plea of discrimination. Even the respondents have repeatedly acknowledged that they have scope for parity by way of merger of akin scales performing similar duties. Though the applicants have not been able to prove their duties are similar, but this issue can always be examined by the respondents only at their level as it has created frustration in the minds of large section of workers and staff.

11. However, we have also considered the submission that an outright merger at this stage without involving and impleading the affected parties like the junior grade clerks, it may lead to endless litigation and counter litigation. Hence no action at this stage will be desirable which will generate counter litigation from the affected parties. It is a fact that the applicants have not impleaded all the parties who are likely to be affected by any merger at this stage. It is also a fact that this merger has taken place in other Railways as early as in 1982-83. The applicants slept over the issue for such a long time to wake up belatedly only in 2000-2001. Considering all aspects of the submissions by both the sides, we dispose of this application with the following directions.

12. The Respondents are already seiged of the problem and we hope that they will be taking a decision on the matter within a reasonable period the outer limit being six months. But, they would be at liberty also to take such decision which does not generate further casual or germinate frustration among others and the lead to endless litigation in the matter from the affected parties who have not been impleaded. We also direct that the

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decision to merger even if it is considered, should be only prospective as far as practicable and the Recruitment Rules should be suitably amended so that the status of the Tool Checkers grades is determined once for all whether by way of keeping them as ex-cadre or by merging them with the Ministerial Staff. As such action has already been taken in other Railways, no further morale need be spelt at this stage. The OA is disposed of with these observations. No orders as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)

S. Biswas

(S. BISWAS)
MEMBER (A)

B.