

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH BANGALORE

DATED THIS THE 17th NOVEMBER, 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao - Member (J)  
Hon'ble Shri P. Srinivasan - Member (A)

APPLICATION Nos. 229 to 233/86(T)

1. Sri G. Janardhana Rao  
S/o Govinda Rao  
II Fireman Grade 'C', M.C. No. 338,  
Loco Shed, Southern Railway, Mysore
2. Sri B.N. Nagaraja Rao  
S/o B.N. Murthy Rao  
II Fireman 'C', M.L. 1525  
Loco Shed, Southern Railway, Mysore
3. Sri R. Nagaraj S/o M. Rathnam  
Engine Cleaner, M.L. 1551  
Loco Shed, Southern Railway, Mysore
4. Sri S.Siddaiah S/o Siddaiah  
II Fireman 'C' Grade, M.L. 1582,  
Loco Shed, Southern Railway, Mysore
5. Sri K. Narasaraju S/o Kullaiah  
II Fireman 'C' Grade, M.L. 1583  
Loco Shed, Southern Railway,  
Mysore

- Applicants

(Sri M.S. Anandaramu, Advocate - common to all applicants)

v

1. The Union of India represented by  
The Secretary to the Government of  
India, Ministry of Railway,  
Rail Bhawan, New Delhi
2. The General Manager,  
Southern Railway, Park Town, Madras
3. The Divisional Railway Manager,  
Mysore Division, Southern Railway  
Mysore
4. The Divisional Personnel Officer  
Southern Railway, Mysore Division,  
Mysore  
and others

- Respondents

(Sri A.N. Venugopal, Advocate)

... This

This application has come up for hearing before this Tribunal to-day, Hon'ble Member (A), Sri P. Srinivasan made the following

O R D E R

This is a composite application by five applicants, which was originally filed as a writ petition before the High Court of Karnataka and subsequently transferred to this Tribunal. All the 5 applicants before us were recruited as substitute Khalasis in the Southern Railway, Mysore Division on different dates from 1.9.1962 to 17.11.1967. There is a post of Engine Cleaner in the Railways which carries the same pay scale as Khalasis. A Khalasi can be redesignated as Engine Cleaner if he fulfils the prescribed educational, medical and age qualifications and passes an aptitude test. Though the applicants were appointed as substitute Khalasis from the years 1962 to 1967, they were not regularised as Khalasis for quite some time. Meanwhile, since they possessed the requisite qualifications and passed the prescribed aptitude test, they were all redesignated as substitute Engine Cleaners with effect from 21.1.1971. The order so redesignating them dated 21.1.1971 appears at annexure A to the application. Notes 3 and 5 thereof are reproduced below:

".....3. The change of designation of substitute Khalasis or Substitute Engine Cleaners is only on an adhoc basis. This is without prejudice to posting of regular Khalasis who may be posted as Engine Cleaners on receipt of the results of suitability test.  
.....

"5. They are liable to be posted back as substitute Khalasis as and when the vacancies of Engine Cleaners are filled by suitable regular Khalasis."

*P. Srinivasan*

..It is

It is stated that respondents 5 to 76 to this application who also joined as Khalasis, became Engine Cleaners from dates subsequent to the date on which the applicants were redesignated as substitute Engine Cleaners. However, as these respondents had been regularised as Khalasis before the applicants, they were designated as regular Engine Cleaners straightaway and the applicants were designated as Engine Cleaners only thereafter. The respondents were shown as senior to the applicants in the grade of Engine Cleaners on the basis of their designation as regular incumbents of that post prior to the applicants and promoted as Fireman 'C' which is the next promotional post, before the applicants. The grievance of the applicants is that they having become Engine Cleaners, even though on an adhoc basis, prior to the respondents, their seniority as Engine Cleaners should have been fixed above the respondents on the basis of their longer continuous officiation in that post and if that had been done they would have been promoted as Fireman 'C' prior to the respondents 5 to 76. The prayer in the application is that the applicants be declared to be senior to respondents 5 to 76; that respondents 1 to 4 (the Union of India and Railway administration) be directed to consider the cases of the applicants for promotion as Fireman C from the earliest date on which respondents 5 to 76 were so promoted and to give them all further promotions and financial benefits accruing therefrom.

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2. Shri Anandaramu, learned counsel for the applicant contends strongly that the date on which the applicants were regularised as Khalasis or the dates on which they were regularised as Engine Cleaners should not be taken into account to determine their seniority. Against all norms and rules, the railway administration took a long time to regularise them as Khalasis. The first applicant joined as substitute Khalasi in 1962 and was not regularised as Khalasi till 1972 i.e. for a period of 10 years. The delay in respect of other applicants, who were also regularised in 1972 was also long though less than that of the first applicant. Such regularisation, after the applicants had officiated in the post for long periods should not be the criterion for determining their seniority. The delay in regularising them in the first post of Khalasi amounted to unfair labour practice and was also contrary to the instructions of the Railway Board dated 20.7.1970 which appear in Annexure J to the interlocutory application No. 1 dated 3.10.1980 filed before the High Court. In any case, Shri Anandaramu contends that the seniority of the applicants in the grade of Engine Cleaners should at least be fixed with reference to their continuous officiation in that grade failing which they should be given the appropriate seniority on the basis of the dates of their regular appointment as Khalasis, which was on 20.5.1972, since the grade of Khalasi and of Engine

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Cleaner are the same. For his contention that continuous officiation should be the criterion for determination of seniority, Shri Anandaramu relied on the judgement of the Supreme Court in Janardhanan's case 1983 SC (L&S) 467 and in G.P. Dovel v. Union of India in 1984 SCC(L&S) 767.

3. Shri A.N.Venugopal, learned counsel for the respondents countered the arguments of Shri Anandaramu. While it is true that the applicants joined as Khalasi from 1962 to 1967 onwards their appointments were only as substitute Khalasis. Till they were regularised in the grade of Khalasis, they could not claim seniority over others who were regularly appointed as Khalasis in the meanwhile. There were delays in the 1960s in the regularisation of substitute Khalasis as regular Khalasis in the past but this affected not only the applicants but also many others who were initially appointed as substitute Khalasis. In any case this was a thing of the past and cannot be agitated now after 14 years (since the applicants were regularised). It is established law that a person regularly appointed to a post from an earlier date has to be senior to a person so appointed later. The applicants were appointed regularly to the post of Khalasis after the respondents and as a result they were posted regularly as Engine Cleaners also after the respondents and they cannot claim seniority over the respondents in the grade of Engine Cleaners for further promotions.

4. We have given the matter careful thought. As pointed

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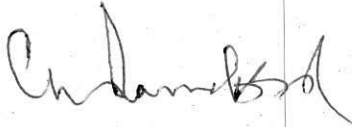
out by the learned counsel for the respondents, we cannot reopen matters which took place more than 14 years ago and enquire into the reasons for the delayed regularisation of applicants as Khalasis upto 1972. We have also to agree that a person appointed regularly to a post earlier than another will have to be reckoned as senior to the latter. The Judgements of the Supreme Court cited on behalf of the applicants were given in a special context where after continuing to work in a post for 10 to 15 years, persons were sought to be made junior to others recruited thereafter and this the Court held to be against all conscience. That is not the case here. What happened here was that appointments of persons as substitute Khalasis and others as regular Khalasis went on from 1962 to 1972 and those who joined as substitute Khalasis had to continue in that state, some benefiting by earlier regularisation and others losing ~~work~~ by later regularisation. In any case, as we have stated earlier, all this happened 14 years ago and we cannot <sup>try to</sup> now set right recruitments and regularisations that were made between 1962 and 1972 and alter the settled order of things at this late stage. The decisions of the Supreme Court, therefore, have no application here. The date from which the applicants were regularised as Khalasis i.e. 20.5.1972 cannot be treated as the date of their regular appointment as


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Engine Cleaners. They were all treated as regular Engine Cleaners from 1976 only after persons senior to them as regular Khalasis were accommodated as regular Engine Cleaners. In fact, the order dated 21.1.1971 redesignating the applicants as substitute Engine Cleaners warned them that the change in designation was only on an adhoc basis, "without prejudice to posting of regular Khalasis who may be posted as Engine Cleaners on receipt of results of suitability test." They were also told in that order that they were liable to <sup>be</sup> reposted as substitute Khalasis when vacancies of Engine Cleaners are filled by suitable regular Khasis. We have been shown the seniority list of Engine Cleaners produced by the respondents and are satisfied that the respondents Nos. 5 to 76 have been rightly shown as senior to the applicants by virtue of their earlier appointment as regular Engine Cleaners. The claim of the applicants that they should have been treated as senior to respondents 4 to 76 as Engine Cleaners and should have been promoted to post of Fireman C prior to respondents 4 to 76, has therefore to fail. In the result, all the applications are dismissed. Parties will bear their own costs.

  
(Ch Ramakrishna Rao)  
Member (J)

  
(P. Srinivasan)  
Member (A)