

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

(383)

Commercial Complex (SDA)
Indiranagar
Bangalore - 560 038
JAN 1992

Dated :

APPLICATION NOS. 1898, 1904, 1906, 1907
1909 & 1911/88(F)

Applicants

Shri A. Sagaynathan & 5 Ors

v/s

The Divisional Personnel Officer,
Southern Railway, Bangalore and
42 Ors

To

1. Shri A. Sagaynathan

9. The Secretary
Ministry of Railways
Rail Bhawan
New Delhi - 110 001

2. Shri M. Muniswamy

10. The General Manager
Southern Railway
Park Town
Madras - 600 003

3. Shri Abdul Majeed

11. The Divisional Railway Manager
Southern Railway
Bangalore Division
Bangalore - 560 023

4. Shri H. Padmanabha

12. Shri M. Sreerangaiah
Railway Advocate
Hotel Mayura (2nd Floor)
No. 2, Kumbargundi Road
Silver Jubilee Park Road Cross -
Near Town Hall
Bangalore - 560 002

5. Shri Muthiyalappa

Shri Mohammed Riyaz
Nos. 1 to 6 -
Khalasis
Southern Railway
Bangalore Division
Bangalore)

6. Shri M.S. Anandaremu

Advocate
'Chandrasekhar Complex'
27, 1st Floor, 1st Main
Gandhinagar
Bangalore - 560 009

7. The Divisional Personnel Officer
Southern Railway
Bangalore Division
Bangalore - 560 023

Subject : FORWARDING COPIES OF THE ORDER PASSED BY THE BENCH

Enclosed herewith please find a copy of the ORDER passed by this
Tribunal in the above said applications on 30-12-91.

OK for DEPUTY REGISTRAR
(JUDICIAL)

Received
2/1/92

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE 30TH DAY OF DECEMBER, 1991

Present: Hon'ble Shri P.S. Habeeb Mohamed Member(A)
Hon'ble Shri Syed Fazlulla Razvi Member(J)

APPLICATION NOS. 1898, 1904, 1906,
1907, 1909 and 1911/1988

1. A. Sagayanathan, S/o B.A. Arul Dass, Applicant
(in A.No.1898/88)
2. M. Munuswamy, S/o M. Urgash Applicant
(in A.No.1904/88)
3. H. Padmanabha S/o B.V. Hanumanthiah Applicant
(in A.No.1907/88)
4. Abdul Majeed S/o Abdul Khader Applicant
(in A.No.1906/88)
5. Muthlappa S/o Narsappa Applicant
(in A.No.1909/88)
6. S. Mohamed Riyaz S/o S. Mahaboob Applicant
(in A.No.1911/88)

(all are working as Khalasis in
SBC, Southern Railway, Bangalore)

(Shri M.S. Anandaramu - Advocate)

v.

1. The Divisional Personnel Officer,
S.B.C. Division, Southern Railway,
Bangalore

2. The Union of India
represented by its Secretary,
Ministry of Railways,
Rail Bhawan, New Delhi



3. The General Manager,
Southern Railways,
Park Town, Madras
4. The Divisional Railway Manager,
Southern Railway,
Bangalore City, Bangalore
5. Shri Thonisluss, working as
Highly skilled Gr.II
Carriage and Wagon Department,
Meter Gauge, Southern Railway,
Bangalore - 23
6. Shri S. Yates, working as
Highly Skilled Gr.II,
Carriage and Wagon Department,
Meter Gauge,
Southern Railway,
Bangalore - 23
7. Shri M. Venkatesh, working as
Highly Skilled Gr.II,
Carriage and Wagon Department,
Broad Gauge, Southern Railway,
Bangalore - 23
8. Shri D. GOvindaswamy, working as
Highly Skilled Gr.II,
Carriage and Wagon Department,
Southern Railway,
Byappanahalli, Bangalore
9. Shri N. Krishnaiah, working as
Highly Skilled Gr.II,
Carriage and Wagon Department,
Meter Gauge, Southern Railway,
Bangalore - 560 023
10. Shri P. ANnamalai, Token No.918
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Meter Gauge, Southern Railway,
Bangalore - 23
11. Shri C. Fletcher, Token No.1047
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Meter Gauge,
Southern Railway, Bangalore - 23
12. Shri N. Chinnappa, Token No.921
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Meter Gauge, Southern Railway,
Bangalore - 23

13. Shri S. Rajasekharan, Token No. 945, working as Highly Skilled Gr.II, Carriage and Wagon Department, Meter Gauge, Southern Railway, Bangalore - 23
14. Shri K. Shanmugam, Token No. 967, working as Highly Skilled Gr.II, Carriage and Wagon Department, Broad Gauge, Southern Railway, Bangalore - 23
15. Shri R. Lucas, Token No. 934, working as Highly Skilled Gr.II, Carriage and Wagon Department, Meter Gauge, Southern Railway, Bangalore - 23
16. Shri P.N. Verghese, Token No. 925, working as Highly Skilled Gr.II, Carriage and Wagon Department, Broad Gauge, Southern Railway, Bangalore - 23
17. Shri L. Krishna Murthy, Token No. 923, working as Highly Skilled Gr.II, Carriage and Wagon Department, Meter Gauge, Southern Railway, Bangalore - 23
18. Shri Ziaullakhan, Token No. 912, working as Highly Skilled Gr.II, Carriage and Wagon Department, Broad Gauge, Southern Railway, Byappanahalli, Bangalore
19. Shri K.P. Gopalan, Token No. 917, working as Highly Skilled Gr.II, Carriage and Wagon Department, Meter Gauge, Southern Railway, Bangalore - 23
20. Shri Yusiff Basha Khan Token No. 871, working as Highly Skilled Gr.II, Carriage and Wagon Department, Meter Gauge, Southern Railway, Bangalore - 23
21. Shri G. Varadharajan Token No. 963, working as Highly Skilled Gr.II, Carriage and Wagon Department, Broad Gauge, Southern Railway, Bangalore - 23



22. Shri J. Ruben, Token No.873,
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Meter Gauge,
Southern Railway,
Bangalore - 23
23. Shri T.M. Venkatesh, Token No.869,
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Southern Railway, Byappanahalli,
Bangalore
24. Shri K. Shamaraj, Token No.911,
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Southern Railway,
Byappanahalli,
Bangalore
25. Shri Ranoji Rao,
Token No.903,
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Meter Gauge, Southern Railway,
Yelahanka,
Bangalore
26. Shri Syed Saleem Mohammed, Token No.940,
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Southern Railway,
Byappanahalli,
Bangalore
27. Shri Naranappa, Token No.904,
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Southern Railway, Yeshwanthpur,
Bangalore - 22
28. Shri Sathyanarayana Singh, Token No.905,
working as Highly Skilled Gr.II,
Carriage and Wagon Department,
Broad Gauge, Southern Railway,
Bangalore
29. Shri E.M. Phillips, working as
Train Examiner, Southern Railway,
Byappanahalli,
Bangalore

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30. Shri P. Subramani, Token No.914, working as Fitter, Carriage and Wagon Department, Meter Gauge, Southern Railway, Bangalore - 23
31. Shri M. Kannan, Token No.356, working as Highly Skilled Gr.II, Carriage and Wagon Department, Southern Railway, Yeshwanthapur, Bangalore - 22
32. Shri P. Gnanavelu, Token No.899, working as Fitter, Carriage and Wagon Department, Southern Railway, Yeshwanthpur, Bangalore-22
33. Shri V.R. Subramanyam, working as Fitter, Carriage and Wagon Department, Southern Railway, Yeshwanthpur, Bangalore - 22
34. Shri C. Robert, Token No.962, working as Highly Skilled Gr.II, Carriage and Wagon Department, Southern Railway, Byappanahalli, Bangalore
35. Shri Nanjunda, Token No.1049, working as Highly Skilled Gr.II, Carriage and Wagon Department, Southern Railway, Byappanahalli, Bangalore
36. Shri K. Ramanjaneyulu, Token No.115, working as Highly Skilled Gr.II, Carriage and Wagon Department, Southern Railway, Byappanahalli, Bangalore - 23
37. Shri Mandala Ravindra, Token No.277, working as Highly Skilled Gr.II, Carriage and Wagon Department, Broad Gauge, Southern Railway, Bangalore - 23



38. Shri Siddoji Rao, Token No. MC 1058 working as Highly Skilled Gr.II, Carriage and Wagon Superintendent, Southern Railway, Byappanahalli, Bangalore
39. Shri Anwar Khan, Token No. MC 883, working as Highly Skilled Gr.II, Carriage and Wagon Foreman, Southern Railway, Yeshwathpur, Bangalore
40. Shri Siddaiah, Token No. MC 882, working as Highly Skilled Gr.II, Carriage and Wagon Supdt. Southern Railway, Byappanahalli, Bangalore
41. Deleted
42. Shri Panchaksharan, Token No. MC 910 working as Highly Skilled Gr.II, Carriage and Wagon Superintendent Southern Railway, Byappanahalli, Bangalore
43. Shri Madaiah, Token No. MC 870, working as Highly Skilled Gr.II, Carriage and Wagon Foreman, Southern Railway, Yeshwanthpur, Bangalore
44. Shri S. Madangopal Raju, Working as Highly Skilled Gr.II, Divisional Mechanical Engineer, Southern Railway, Bangalore - 23

Respondents

(Shri M. Sreerangaiah - Advocate)
for R-1 to 4

These applications have come up before
this Tribunal for orders. Hon'ble Member(A)
made the following:

ORDER

On the basis of the Remand Order passed by the Hon'ble Supreme Court dated 26.10.1990 in Civil Appeal Nos.4997 to 5002 of 1990 (Appeals by Special Leave granted by the Hon'ble Supreme Court from the Judgment and Order dated 21.4.1989 of the Bangalore Bench of the Central Administrative Tribunal in A.Nos.1898, 1904, 1906, 1907, 1909 and 1911 of 1988 in which the applicants were A. Sagayanathan 1898/88, M. Munuswamy 1904/88, H. Padmanabha 1907/88, Abdul Majeed 1906/88, Muthlappa 1909/88 and S. Mohamed Riyaz 1911/88), these applications have to be disposed of by the Tribunal. The Order of the Hon'ble Supreme Court dated 26.10.90 in Civil Appeal Nos.4997 to 5002/90 reads as follows:

"Special leave granted.

The complaint of the appellants is that they are still not promoted to the higher post although their juniors had been promoted as early as May, 1983. Promotion to the higher post is governed by the rule of seniority. The appellants had not been considered for promotion.

The Tribunal found that the appellants were too late in agitating their grievance. It was solely on the basis of delay that the Tribunal did not enter on the merits of the appellants' complaint.

It is not disputed that the juniors of the appellants had been promoted. However, respondent's counsel submits that the juniors were promoted for justifiable reasons.



Whatever may be the reasons which prompted the respondent to promote the juniors in preference to the appellants, the fact is that the appellants had a genuine grievance in so far as they had been superseded by their juniors. This was precisely the dispute which the Tribunal ought to have considered, but unfortunately it did not do so by reason of the delay.

Having heard counsel on both sides and perused the records, we are of the view that, despite the delay, this is a matter which requires investigation.

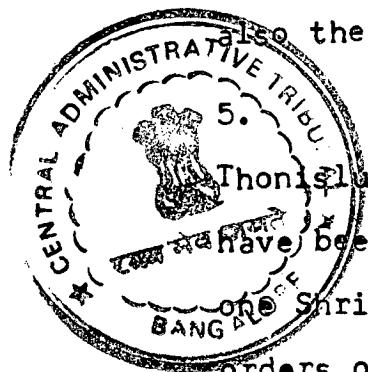
Accordingly, we direct the Tribunal to re-hear the parties after giving them an opportunity to implead the necessary parties, file fresh affidavits and adduce any other evidence which they may wish to adduce. The Tribunal shall dispose of the matter on the merits as urgently as possible. The appeals are accordingly allowed. No costs."

2. Though the order of the Hon'ble Supreme Court mentions "it is not disputed that the juniors of the appellants had been promoted", the order also goes on to direct the Tribunal to re-hear the parties after giving them an opportunity to implead the necessary parties, file fresh affidavits and adduce any other evidence which they may wish to adduce and the Tribunal shall dispose of the matter on merits as urgently as possible.

3. Earlier, the Tribunal vide its order in A.Nos.1898 to 1930, 1970 to 1977/88, 305 & 307 and 336/89 had dismissed the OAs filed by the applicants including the six whose cases have come up on remand from Hon'ble Supreme Court. The dismissal of the Tribunal was on the ground that the applications were barred by time and the reliefs even if well founded

could not be granted for want of necessary parties.

4. The six applicants S/Shri A. Sagayanathan, M. Munuswamy, H. Padmanabha, Abdul Majeed, Muthlappa ^b and S. Mohamed Riyaz, who are employees of the S-B'C (Division) Southern Railways, have filed these applications with the prayer for the issue of directions by the Tribunal to Respondents 1 to 4 (R-2 to 4 have been impleaded after the remand from the Hon'ble Supreme Court) to apply the ratio of the decision in Yates's case in A.No.518/86 disposed of by the Tribunal vide its orders dated 6.3.87 and also the decision in the case of G. Varadarajan and others in A.Nos.779 to 789/87(F) dated 20.6.88 ^b and also issue directions to Respondents 1 to 4 to notionally promote the applicants as Fitters ^{were promoted} from the dates their immediate juniors, with reference to their length of service as Substitute Khalasis and to determine their seniority and pay accordingly taking into account the increments that would have accrued to them during the intervening period and issue such other directions as are fit in the circumstances of the case as also the costs of the applications.



5. Respondents 5 to 44 starting with one Thonigluss and ending with one S. Madangopal Raju ^{have been} impleaded in these OAs though one of them, one Shri Narasimha Murthy has been deleted vide orders of the Tribunal in these OAs dated 21.8.91.

6. The facts as stated in the applications are that the applicants joined the service of the respondents as Casual Labourers/Substitute Khalasis, the dates of their joining being as follows:

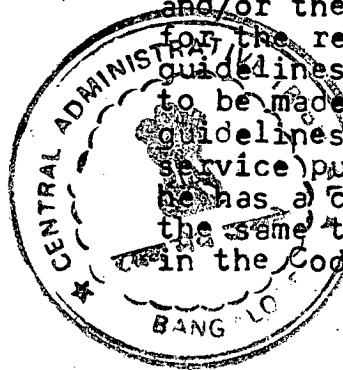
S/Shri

A. Sagayanathan	14.5.74
M. Munuswamy	28.2.72
H. Padmanabha	12.4.71
Abdul Majeed	6.8.69
Muthlappa	12.4.71
S. Mohamed Riyaz	12.4.71

Respondents 5 to 44 (excluding Sr.No.41 Shri Narasimha Murthy) joined on various dates - in the case of Thonisluss(R-5) on 25.11.70 and in the case of others during various dates in the years 1974, 1975, 1976 and 1977. Their pay scale in the cadre of Khalasis was Rs.196-232 and the next promotion post was that of Fitter in the pay scale of Rs.260-400. The railway authorities had taken a decision to promote a number of persons to the cadre of Fitter by their orders dated 30.5.83. The names of some of the persons promoted included M. Venkatesh(R-7) on 1.10.74, D. Govindaswamy(R-8) on 19.5.74 and aggrieved by the said order of promotions, Yates(Respondent No.6 in the present set of cases) had approached the Tribunal in A.No.518/86(F) disposed of on 6.3.1987. The following orders were passed by the Tribunal in Yates's case:

"It would be seen, that among other things, it is clearly spelt out in the above para (xiii) of sub-section iv, Section B Chapter I of the Manual, that ceteris paribus, the total length of service as casual labourers either continuous or in broken periods, regardless whether they have attained the temporary status or not, should be taken into account, so as to ensure that casual labourers who are senior by virtue of longer service are not left out. In the instant case, it is not denied by the Counsel for the respondents, that the applicant was appointed as a Substitute Khalasi, on 8.5.74 and that he resumed duty in this post on 9.5.74 i.e. earlier than the 11 respondents. Out of these 11 respondents, 4 were appointed as Substitute Khalasis, between 1975 to 1977 and 4 were appointed in the latter half of 1974 i.e. distinctly later than the applicant.

18. While assuming that the Railway Board had derived authority to frame rules under Rule 123 of the Code, by way of general application to Group-D railway servants under their control, in the instant case, in regard to their appointment on the special criteria of "compassion" and/or "loyalty", these rules certainly, could not be repugnant to the rules framed under the Code, as reflected in the Manual. Para (xiii) ibid of the Manual, lays down explicitly, that it should be ensured that casual labourers, who are senior by virtue of length of service regardless of their status, are not overlooked for their career advancement. The Railway Board booklet, on guidelines relating to appointment on "compassionate" grounds, shown to us by the counsel for the respondents, does not reveal that such appointments could be made, ignoring the seniority of others, regardless of length of service, and if at all such a stipulation exists in the said guidelines, it would be clearly violative of the rules/instructions in the Code and the Manual, being inconsistent with the rules made by the President and/or the Union Ministry of Railways. The Counsel for the respondents could not show to us to the guidelines, drawn up in regard to appointments to be made on grounds of "Loyalty". Should these guidelines, too, similarly overlooked length of service (put in by an incumbent, by virtue of which he has a claim for seniority, they would be, by the same token, violative of the rules/instructions in the Code and/or the Manual.



19. At the most, the 11 respondents could have been shown preference at the time of their initial appointment as Substitute Khalasis on special grounds of "compassion" and "loyalty" according to the rules/instructions drawn up by the Railway Board. But once these respondents were given such preferential appointment as Khalasis, on the above consideration they could not steal a march, for subsequent regularisation in this post and/or for promotion over others, who had a longer length of service in the post in question and were suitable to be considered for regularisation and for promotion. We notice that in the case of the applicant, the 11 respondents though appointed later (some even after two years) in the identical post as Substitute Khalasis as in the case of the applicant (though on grounds of "compassion" and/or "loyalty") were considered out of turn, irrespective of their length of service for regular appointment as Khalasis and subsequently for promotion as WLA/Skilled and later as Fitters in the pay scale of Rs.260-300 on 6.7.1983. We are of the view that this is clearly in violation of the Rules of Recruitment.

20. In the result, we make the following order:

- (i) We direct the respondents to assign deemed dates of promotion to the applicant, to the posts of Wagon Lubricant Attendant/Skilled and Fitter, from the dates his immediate junior (with reference to his length of service in the post of Substitute Khalasi) was promoted to these posts and re-determine his seniority and refix his pay accordingly.
- (ii) Since, however, the applicant has not shouldered responsibility in these higher posts, he shall not be entitled to arrears of salary, till the date he is actually promoted to the post of Fitter according to his seniority, re-determined as above.
- (iii) This order be given effect to within a period of one month from the date of its receipt."

7. The reasonings in this judgment were also followed by the Tribunal in the case of G. Varadarajan A.Nos.779 to 789/87 where the Tribunal passed the following orders:

"In the present case, R-1 and R-2, have not produced the orders of initial appointment of R-3 to R-13 as regular Khalasis. In the absence of these orders, it would be logical to infer that if R-9 and R-11 were initially appointed as Substitute Khalasis and not as regular Khalasis, as aforementioned, R-3 to R-8, R-10 and R-12 and R-13 too, were appointed likewise, in identical posts, as the applicants. If that be the case, the present applications being alike on fact and law with YATE's case, the ratio of the judgment in the latter, would apply mutatis mutandis to the applications before us and binding on the respondents on the principle, de similibus idem est judicium, particularly when the respondents in YATE's case, did not either apply for review of that judgment or go in appeal to the Supreme Court within the prescribed period. The additional documents viz., Annexures R-1 to R V produced by R-1 and R-2 to substantiate their case, are of little avail to them, as they do not in any manner vary the facts and circumstances, based on which, the judgment was rendered in YATE's case.

16. In the result, we make the following order:

ORDER

- (1) We declare that these applications are governed mutatis mutandis, by the ratio of the decision in YATE's case.
- (2) Consequently, we direct R-1 and R-2 to notionally promote the applicants as Fitters, from the dates their immediate juniors (with reference to their length of service as Substitute Khalasis) from among R-3 to R-13 were promoted to these posts and to determine their seniority and pay accordingly, taking into account the increments that would have accrued to them during the intervening period.
- (3) The applicants, however, will not be entitled to any arrears on this account, not having actually shouldered responsibility in the posts of Fitters.
- (4) This order be complied with, within a period of two months from the date of its receipt.
- (5) The applicants are disposed of in the above terms, but with no order as to costs.



8. According to these applications, the ratio of the decisions in Yates case as well as Varadarajan's case should be applied to the applicants in the present cases and the applicants are to be promoted to the cadre of Fitter from the date, their juniors with reference to their length of service as Substitute Khalasis, were promoted. As a result of their grievances not being rectified, they pray for the application of the ratio and the decisions of Yates's case and Varadarajan's case for rectification of their seniority and for promotion and consequential benefits.

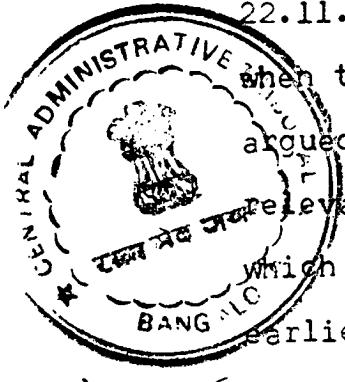
9. Respondents 1 to 4 in their reply have stated that the applicants were appointed as Substitute Khalasis in the pay scale of Rs.196-232. Vide Annexure R-1 Abdul Majeed, applicant in A.No.1906/88 was appointed as Substitute Khalasi on 6.8.69, A. Sagayanathan, applicant in A. No.1898/88 on 14.5.74, H. Padmanabha, applicant in A.No.1907/88 on 29.11.71, Muthlappa, applicant in A.No.1909/88 on 20.6.72, S. Mohamed Riyaz, applicant in A.No.1911/88 on 12.4.71 and this order (Annexure R-1) does not show the name of Munuswamy, applicant in A.No.1904/88. But, the information has been furnished that Munuswamy

was appointed as Substitute Khalasi on 28.6.72.

The persons who are initially appointed as Substitutes are to be absorbed against the regular vacancies that become available every year with reference to the length of service as Substitutes and their seniority will count only from the date of their regular appointments as Khalasis as shown in Col.4 of Annexure R-1. Due to the re-classification of semi-skilled posts, certain persons were allotted to the Wheel Lubricating Unit in the composite Mysore Division and later others were posted to the new Bangalore Division. Respondents 1 to 4 have denied the suggestion that Respondents 5 to 42, omitting Sr.41, were appointed as Substitute Khalasis or Respondents 43 and 44. They have been appointed either on grounds of compassion or loyalty and these are to be deemed as appointments by direct recruitment and not appointments by initial appointments as substitutes followed by empanelment, further followed by regular appointments.

The stand is also taken in the reply filed on 22.11.1991 that certain records were not available

when the cases of Yates and Varadarajan were argued. "These respondents submit that the relevant service rules and service registers which were not before the Hon'ble Court on the earlier occasions would disclose that the applicants



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cannot claim a status similar to those of direct recruits. A substitute or a casual appointee requires to be empanelled before being absorbed regularly and in the case of persons who are appointed on compassionate or grounds of loyalty, their services for seniority and promotion counts from the date of their appointment."

10. The learned counsel for the applicants argued during the arguments of the case that the applicants and the respondents stood on the same footing and the later appointees like the respondents could not steal a march over them and the ratio as is evident from the judgment in Yates's case and also as applied in Varadarajan's case(supra) should be fully applicable to the present cases in question.

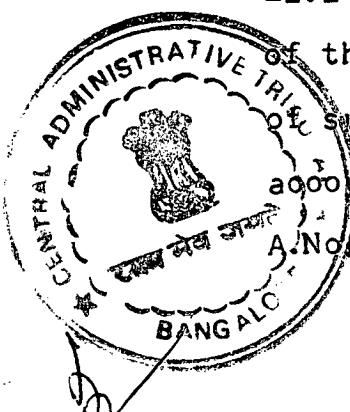
11. As against this contention by the learned counsel for the applicants, the learned counsel for the respondents 1 to 4, argued that the Railway Board was fully competent to issue orders or instructions in so far as compassionate appointments were concerned and also appointments on grounds of loyalty. The stand taken is as follows:

"These respondents submit that the appointments on grounds of loyalty or compassion are made by the authorities competent to make the appointments in accordance with the executive instructions issued by the Ministry of Railways under Article 73 of the Constitution of India. It is relevant to state here that these executive instructions have the same status as statutory rules."

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13. *h.00*

According to the learned counsel for the respondents the rules contained in the Indian Railway Establishment Code, Volume-I, Fifth Edition, 1985, have been framed by the President in exercise of powers conferred on him by proviso to Article 309 of the Constitution and stated in Rule 123 that the Railway Board have full powers to make rules of general application to Group C and Group D railway servants under their control and also stated in Rule 124 that the General Managers of Indian Railways have full powers to make rules with regard to Railway servants in Group C and D under their control provided they are not inconsistent with any made by the President or the Ministry of Railways. He also drew our attention to the rules (the Master Circular on appointment on compassionate grounds published by the Ministry of Railways in Memo No.E(NG)11/90/RC-1/117 dated 12.12.90 and also the Master Circulars on appointment substitute in the Railways which issued on consolidated all the earlier circulars dated 21.1.91, vide Memo.No.E(NG)/11/90/SB/Master Circular dated 21.1.91. He also drew attention to some rulings

of the Tribunal on the subject of how the service of substitute Khalasis were to be taken into account and cited a case of Abdul Salam in A.Nos.434-436/87 disposed of on 8.4.1988.



13. After perusal of the application, the reply and the documents and after hearing the rival arguments, we find that the main ground stated in the applications for granting the prayers is the ratio in Yates case and Varadarajan's case. The following respondents S/Shri M. Venkatesh, D. Govindaswamy, J. Krishnaiah, J. Ruben, T.M. Venkatesh, Ranoji Rao, Sathyanarayana Singh, M. Kannan, V.R. Subramanyam, C. Robert and Anwar Khan who are respondents 7, 8, 9, 22, 23, 25, 28, 31, 33, 34 and 39 in the present applications were respondent Nos.10, 9, 13, 12, 10, 7, 8, 6, 5, 3 and 4 in Varadarajan's case and they were respectively respondent Nos.16, 15, 28, 27, 24, 12, 13, 9, 8, 6 and 7 in Yates case. While Yates, who was applicant in the earlier case is R-6 in the present case and some other applicants in Varadarajan's case like Varadarajan himself are respondent-21, C. Fletcher R-11, N. Chinappa R-12, P. Annamalai R-10, L. Krishnamurthy R-17 and R. Lucas R-15. One Shri Thonisluss who admittedly is senior to all the applicants in that he is stated to be appointed on 25.11.70 has also been added as R-5. ^{14. Appointment of other respondents see also given.}

14. Before we try to find out what is the ratio in Yates Case and Varadarajan's case, it will be necessary to see what expressions, like 'substitutes', 'temporary servants' and 'employees

who have got appointments on compassionate grounds or on grounds of loyalty' mean in terms of the Railway Rules. As per Chapter XXIII, 'substitutes' mean - "persons engaged in the Indian Railway Establishments on regular scale of pay and allowances applicable to posts against which they are employed and such posts may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant". A 'temporary railway servant' means a railway servant without a lien on a permanent post on a Railway or any other administration or office under the Railway Board. The term does not include casual labour', a 'contract' or 'part time' employee or an 'apprentice', though this definition leaves it vague whether a substitute could be included under the expression 'temporary railway servant'. Rule 2318 in the same chapter makes it clear that substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants from time to time on completion

of 6 months continuous service. If the term 'temporary railway servant' could also include in its scope a 'substitute', the rules would not have said that substitutes should be afforded all the rights and privileges as may be admissible to



temporary railway servant. An employee on compassionate appointment would mean an employee who is covered by the various circulars of the Railways compiled in the Master Circular of Appointment on Compassionate Grounds. There is no doubt that the Indian Railway Establishment Manual contains the rules framed by the Railway Board under provision 123 of the Indian Railway Establishment Code, Volume I, 5th Edition, 1985 and, therefore, have the same status as statutory rules. The rules for the appointments of Group C' and 'D' posts are also contained in the same manual. The various circulars relating to appointments on compassionate grounds would show that the appointments on compassionate grounds are regular appointments. This will also be clear from the circular issued by the Government of India, Ministry of Railways No.E(NG)III/78-RCI/1 dated 7.4.83 and subsequent circular No.E/NG/II/82/RRI/32 dated 24.2.83 which states in para 3 "Advance Correction Slip making necessary provision in the Indian Railway Establishment Manual in respect of the above matters is enclosed for your information. The Ministry of Railways have decided that the Indian Railway Establishment Manual should be deemed to have been amended as in the Advance Correction Slip".

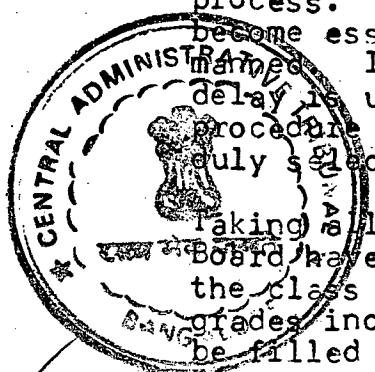
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16. An appointment, however, on loyalty grounds does not stand on the same footing. It was stated to be covered by a letter from the Assistant Director Railways in NO.E/NG/III/ 73/RCI/102 dated 13.2.74 to the GMs of the Railways. The letter reads as follows:

"Sub: Employment of sons, daughters and dependents of railway employees.

There have been a number of agitations and work stoppages on the railways in the recent past and it was possible to keep the nation's life line - railways - appearing in certain critical sectors only because of the dedicated services of loyal staff, who stuck to their posts in the face of intimidation and violence. Minister for Railways has recently announced in the Parliament that the services of such loyal staff would not go unrecognised. On the railways, there is a system of giving appointments, on compassionate grounds, in Class-III and Class IV posts to sons/daughters, dependents, of railway employees who die prematurely or get permanently crippled or afflicted with serious illness, leaving the family in straitened circumstances. This system can be extended in the case of employees who have rendered exemplary service in the above context.

With the sanction of additional leave reserve posts and posts required for implementation of Pay Commission recommendations, which posts have to be filled up on a priority basis, a need has arisen to quicken the recruitment process. In the context of agitations, it has become essential to keep all posts properly manned. It has been the experience that some delay is unavoidable in following the normal procedure of recruitment and getting candidates duly selected by railway service commissions.



Taking all the above facts into account, the Board have decided that 20% of the vacancies in the class III service in initial recruitment of grades including Apprentice categories, should be filled by the General Managers through their

own administrative arrangements rather than through the railway service commissions, and bearing in mind MR's announcement in Parliament. All such appointment made in a year should be listed and details of the candidates sent to the concerned railway service commission who will scrutinize that the candidate fulfills the prescribed qualifications for the posts and thereupon accord their concurrence to the appointments. Due representations to scheduled Castes and scheduled tribes candidates should also be kept in view.

Similar considerations should be given to sons/daughters/dependents of class IV employees by the Selection Boards for the purpose."

16. It is clear that the system of compassionate appointments in class III and IV posts is sought to be extended to appointments on grounds of loyalty. But, this letter is not complete about the procedure for appointments on grounds of loyalty. It also states that all appointments made in a year on grounds of loyalty should be listed and details of the candidates sent to the Railway Service Commission and similar consideration should be given to sons and daughters of Class IV employees in the Selection Boards. This has been followed up by d.o. letter No.E(LU)74/STI/81 dated 29.5.74 from G.P. Warrior to Shri V. Ramanathan, G.M./S.Rly/ Madras., which reads as follows:

"Now that the strike is over, there should be no delay in implementing the assurances by the Railway Minister about rewarding these workers who stuck to their duties during the strike in the face of grave danger to themselves, intimidation violence and coercion. It is quite likely that a number of staff and officers had to work

continuously for days together without any rest at all. All these people will have to be rewarded suitably and these rewards can be by way of -

- a) employment of their wards (sons and daughters) in railway jobs.
- b) extension of service or re-employment in suitable cases;
- c) hard duty allowance, as provided for in the strike scheme;
- d) grant of advance increments.

2. All the Divisional Superintendents and Heads of Departments should carefully prepare the list of staff who are to be rewarded, taking care to see that people do not get more than one type of reward and, therefore, classifying them according to the arduousness of their duties and the difficult circumstances under which they have worked.

3. As regards the allocation of the number of cases where advance increments can be given, there is a chance of the number that was already communicated to you being increased, and you will hear further from me.

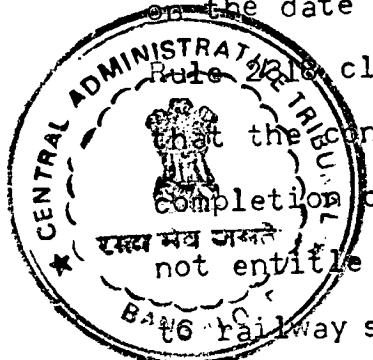
4. I shall be glad to get a progress report from you after about 10 days, as to what has been done to implement the M.R's assurances."

17.

18. In so far as substitutes are concerned,

they are not entitled to regular appointments

on the date they originally joined the railways.



Rule 2218 clearly states in the note below Rule 318 that the conferment of temporary status on (subsequently reduced) completion of six months continuous service will not entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position

in the select list and/or they are selected

in the approved manner for appointment to regular ^{rule 2318.}
~~as far as the old rule position as per note below~~ railway posts. The circular issued by the Railways

(Master Circular dated 29.1.91) ^{also} makes it clear

that the date of appointment of a substitute

to be recorded in the service book against the column 'date of appointment' should be the date

on which he/she attains temporary status after a continuous service of four months if the same is followed by his/her regular absorption. Otherwise,

it should be the date on which he/she is regularly appointed/absorbed. ^{the Rule in 2319 does not alter the position}

18. 19. This is the rule position in so far as

substitutes, temporary servants and employees appointed on compassionate grounds or loyalty grounds are concerned.

20. 19. We find in examining the ratio applied

by the Tribunal in the cases of Yates and Varadarajan (supra) that in the case of Yates A.No.518/86(F)

the Tribunal found that the total length of

service as casual labourers either continuous or

in broken periods, regardless whether they have

attained the temporary status or not, should be

taken into account so as to ensure that casual

labourers who are senior by virtue of longer service

are not left out. The Tribunal found in the case

of Yates that the applicant was appointed as a

Substitute Khalasi on 8.5.1974 and that he assumed resumed duty on 9.5.74 i.e. earlier than the 11 respondents. Out of the 11 respondents, 4 were appointed as Substitute Khalasis between 1975 to 1977 and 4 were appointed in the latter half of 1974 distinctly later than the applicant. There is a further finding that casual labourers who are senior by virtue of length of service regardless of their status are not overlooked for their career advancement. There is also a finding that should the guidelines on loyalty or compassionate grounds similarly overlook length of service put in by an incumbent by virtue of which he has a claim for seniority, they would be violative of the rules/instructions in the Code and/or Manual. There is also a finding as per para 19 of the judgment in Yates' case that having got their initial appointments as Substitute Khalasis on grounds of compassion and loyalty according to the rules of the Railway Board and once the respondents were given preferential appointment as Khalasis on the grounds of compassion and loyalty, they cannot steal a march for subsequent regularisation for others. It was this reason which was followed in the case of Varadarajan and others where a finding was recorded by the Tribunal that R-1 and 2 in that case have not produced the orders of initial appointment of



R-3 to R-13 as regular Khalasis and in the absence of the orders, it would be logical to infer that if R-9 and R-11 were initially appointed as Substitute Khalasis and not as regular Khalasis as aforementioned, R-3 to R-8, R-10 and R-12 and R-13 in those cases were appointed likewise in identical posts as the applicants and if that be the case, the applications in Varadarajan's case being alike on fact and law with Yates case, the ratio of the judgment in the latter would apply mutatis mutandis to the applications before the Tribunal and accordingly the orders were passed by the Tribunal in Varadarajan's case.

21. These judgments have become final and, therefore, they will be binding in so far as those parties to the applications are concerned and the seniority question or the appointment to the higher posts in so far as those parties are concerned cannot be re-opened.

22. Applying the principles indicated in the Full Bench Decision in the case of ABRAHAM TITUS AND OTHERS v. UNION OF INDIA AND OTHERS - pages 269 to 286 of Vol.II of the Full Bench Judgments of C.A.T.(1989-1991)- Bahri Brothers, Delhi, 1991, para 40 states as follows - "If the revision of Seniority is made by the respondents, it can only be on the strength of the decisions of the High

Court of Madhya Pradesh and of the Jabalpur Bench of this Tribunal, which the respondents are bound to implement so long as they are not reversed on appeal", we find a touch of finality to the seniority question as well as the consideration for promotion as granted to the applicants in the cases of Yates as well as Varadarajan.

22. But, there could be a situation which has been referred to in para 32 in the case of Full Bench Judgment in Abraham's case(supra);

"32. This takes us to the second facet of the submission of the counsel of the applicants. When a Court after analysis of the rival pleas enunciates a proposition of law and based on it allows certain reliefs to some civil servants who are applicants before it, normally it behoves the Administration to extend the benefit of the relief to other civil servants similarly circumstanced. But in certain circumstances, the principle cannot be applied. One such instance is where in a subsequent pronouncement the Court holds that the enunciation made in the earlier case is without due regard to the entire facts and circumstances, and on that account arrives at a different conclusion. This is exactly what has happened in the instant case, as is clear from the following."

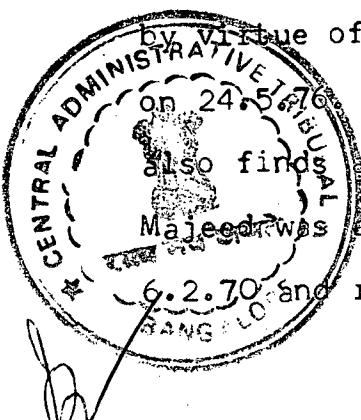
23. 24. Our analysis shows that we are unable to discover any proper ratio in the judgments of the Tribunal in Yates case or in Varadarajan's case. In fact, the seniority ~~plea~~ is for casual labourers has been applied to substitutes who stand on a entirely different footing. The rule position



makes it very clear that in the case of substitute, the date of appointment is either the date on which he attains temporary status or regular absorption which again depends on the substitute being included in the approved manner in select list or in panel. This will also be clear from the Service Books of the applicants. In the case of A. Sagayanathan his first appointment is shown as 14.5.74 but the date of regularisation as 27.3.81. The details in the Service Book shows that he was appointed as a Substitute Khalasi w.e.f. 14.5.74 at SBC(MG) Carriage Depot on a pay of Rs.196/- in the scale of Rs.196-232. He was empanelled for absorption as temporary khalasi and the panel was approved by DRM on 27.3.81. He was not a casual labourer at all, either getting daily wages or other type of wage payment. He was appointed on regular pay scale as the very term 'substitute' indicates. His pay has been increased vide entries shown in the Service Book and as per the Service Book entry he has been regularised from 27.3.81. The Service Book in the case of Munuswamy shows that he was appointed on 28.12.72 and was made regular on 27.3.81. The entries further show that he was empanelled for absorption as Temporary Khalasi

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against vacancies which existed and the panel was approved by DRM on 27.3.81 and he had been absorbed as temporary Khalasi in the scale of Rs.196-232 from 27.3.81. Shri Muthyalappa was appointed in 1972 but his services had been terminated on 30.8.74 and he was re-appointed and his appointment was considered a fresh one for all purposes vide orders issued in 1977 and he joined duty again on 12.1.77. He was empanelled for absorption as Temporary Khalasi and was absorbed as a Khalasi on 27.3.81. In the case of H. Padmanabha also, he was first appointed on 29.11.71 as a Substitute at YNK Loco Shed in the scale of pay of Rs.70-85 but was empanelled and approved for absorption only in March, 1981. Shri Mohamed Riyaz was appointed as a Casual Labourer on 12.4.71 on daily wages but later posted as a Substitute Khalasi on Rs.70/- in the scale of pay of Rs.70 - 85 from 17.4.71. He had also come on mutual transfer with one Muddukrishna in 1974. His services were terminated and he was re-appointed as a Substitute Khalasi



The entry relating to mutual transfer also finds a place in his Service Book. Shri Abdul Majeed was also appointed as a Substitute on 6.2.70 and regularised on 29.3.75. He also

joined in 1980 on mutual transfer.

24. These details will show that they ~~except one, in hakey~~, were not casual labourers at all but appointed as Substitute Khalasis and their date of regularisation or absorption will be the dates as indicated in the rules and their Service Books. Their first date of appointment as Substitute Khalasis or as Casual Labourer in the case of one ^(Manuwal Ry 2) will not help and, therefore, we are unable to apply the principle of length of service as applied in the case of Yates and extended in Varadarajan's case (supra) by the Tribunal. The Tribunal also had found that if the applicants in those cases i.e. Yates and Varadarajan's cases had the advantage of counting the loyalty grounds or compassionate grounds at the time of their initial appointments as Substitutes, they could not take further advantage over the others on grounds of further compassion or any other ground. But the scope of the rule is that an appointment on compassionate grounds as per the circulars of the Railways is a regular appointment though for reasons we will state below an appointment on loyalty grounds may not stand on the same footing. ~~For want of~~ particulars in the cases of the respondents,

except to the extent as available in the decided cases of Yates and Varadarajan, we do not have much further data though the dates of joining in service of all the respondents 5 to 40, 42 to 44 are available.

25. The Service Books in the case of S/Shri S. Sathayanarayana Singh, Ranoji Rao, M. Venkatesh, V.R. Subramani and J. Ruban have also been produced by the respondents 1 to 4.

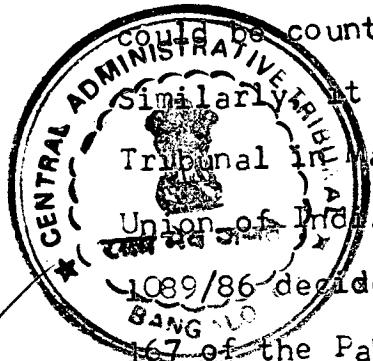
26. So far as the loyalty grounds are concerned, the reliance is on the one circular and d.o. letter from Shri Warrior. A d.o. letter cannot be said to lay down a policy decision as has been held by a Bench of the Tribunal in O.A.No.2557/90 dated 1.10.1991 wherein it was held that a d.o. letter from Shri Ramanujam, the then Secretary of the Personnel Department addressed to Shri T.N. Sheshan, Secretary, Environment and Forests, did not modify the provisions made for reservations in favour of Scheduled Castes and Scheduled Tribes in the All India Services(AS) and the Government policy as laid down in the annual report of the Personnel Ministry alone

could be counted as the provisions for the purpose.

Similarly, it has been held by a Full Bench of the Tribunal in Mallela Sreerama Murthy & Another v. Union of India and Others - T.A.No.1104/1986 and

1089/86 decided on 17.8.89 pages 152 to

167 of the Pahri Publication(page 21) that mere



executive orders of the Railway Board challenging that the provisions of the rules contained in the Railway Establishment Code cannot have the force of law.

27. A mere d.o. letter from Shri Warrior to the General Manager does not lay down the policy. Besides, the d.o. letter of Shri Warrior refers to staff and officers and not employees in Group 'C' and 'D' categories in the railways and besides the alternatives given for rewarding loyalty suffer from arbitrariness in that no guidelines have been given as to how differentiation be made from case to case for granting advance increment or hard duty allowance or extension of service or employment of wards as if these incentives stood on the same footing. Therefore, we do not think that these letters which are either incomplete as in the case of letter dated 13.2.74 or only d.o. letters have the force of law. Appointments of temporary railway servants, substitute railway servants, appointments on compassionate grounds are entirely different categories and cannot be mixed up for any purpose whatsoever. The rules are very clear on this excepting that the provisions made for appointments on loyalty being imperfect executive orders and d.o. letters cannot be laying down the policy. But in so far

as such appointments are concerned, we do not propose to strike them down at this length of time as this circular or the d.o. letter from Shri Warrior has not been challenged specifically. The applicants want only the ratio in the cases of Yates and Varadarajan applied, but we are unable to discover any particular ratio which can be applied. On the other hand, the law relating to Substitute Khalasis has been correctly laid down by the Tribunal in Abdul Salam's case (supra) O.A. Nos. 434-436 of 1987 disposed of on 8th April, 1988, as follows:

"Even if we accept this contention we must observe that at the time the applicants were sent for training they were only Substitute Khalasis; they can claim seniority on this basis only in the grade of Substitute Khalasis in Diesel Division and not in the grade of regular Khalasis. They can claim seniority in the grade of regular Khalasis only after they were empanelled."

28. The applicants in these cases cannot

claim themselves to be on par with the applicants in Yates and Varadarajan's cases as the latter were given benefit of their services before absorption as Khalasis (as per note below Rule 2318) and since we find



that no ratio as such has been laid down in those two cases, the question of applying such ratio in the facts and circumstances of the present cases does not therefore arise.

29. However, we direct the respondents 1 to 4 to re-do the exercise of seniority as Khalasis keeping in view our observations and in the course of this order and the dates of absorption as Khalasis as per note below Rule 2318 of the Chapter XXIII of the Railway Establishment Manual and if any of their juniors have been promoted to higher posts give any or all of the applicants who might have been absorbed earlier after empanelment as Khalasis, the benefit of seniority and consequential benefits like promotion.

30. Since the judgments in the cases of Yates and Varadarajan have become final, there will be

no disturbance to seniority as between the parties in those applications. Though the respondents 1 - 4 have now produced the service records which seem to indicate that the status of certain respondents like Shri Ruben might have been different from what had been assumed to be when disposing of the earlier OAs, we do not take any notice of the same as the cases in so far as those applications are concerned have become final. The present applications are disposed of accordingly.

There will be no order as to costs.

Sd-

MEMBER(A) 30/12/91

Sd-

MEMBER(J)

TRUE COPY

R. Venkatesh
1/1/92
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE SECTION
BANGALORE



CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

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Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 26 APR 1989

APPLICATION NOS. 1898 to 1903, 1904 to 1911
1912 to 1930, 1970 to 1977/88(F)
305 to 307 & 336/89(F)

Applicants

Shri A. Sagayanathan & 44 Ors

v/s

The Divisional Personnel Officer,
Southern Railway, Bangalore

To

1. Shri A. Sagayanathan *named personnel on 2/4/88*
2. Shri P. Selvaraj
3. Shri R.P. Renugopal
4. Shri N. Venkatachalam
5. Shri E. Varadan
6. Shri K. Ramanujam
7. Shri M. Muniswamy
8. Shri Mohammed Asif
9. Shri Abdul Majeed
10. Shri H. Padmanabha
11. Shri Meeraiah
12. Shri Muthiyalappa
13. Shri N. Ramachandra
14. Shri Mohammed Riyaz
15. Shri S. Ramulu
16. Shri Lakshmaiah

Respondent

17. Shri T. Shama Rao
18. Shri D. Dass
19. Shri P. Subbarayudu
20. Shri P. Armugam
21. Shri M. Eswar
22. Shri S. Venkatappa
23. Shri Srinivasan
24. Shri R. Sadashiva
25. Shri N. Purushotham
26. Shri Nataraj

(Sl Nos. 1 to 26 -

Khalasis
Southern Railway
Bangalore Division
Bangalore - 560 023)

27. Shri S. Sampath Kumar
28. Shri K. Shivananjaiah
29. Shri Prabhakaran

.S. Irudayraj
.B. Fletcher
.Gopalanaidu
33. Shri Yedurappa
34. Shri D.T. Venkataрамана
35. Shri Venkatesha
36. Shri D.S. Madanagopal Raju
37. Shri V. Srinivasa Rao
38. Shri C. Ananda Reddy
39. Shri R. Shashidharan
40. Shri Abdul Khayum

41. Shri Shivalingaiah
42. Shri Venkatesha
43. Shri Damodaran
44. Shri C. Carter
45. Shri Munavar Pasha

(Sl Nos. 27 to 45 -

Fitters
Carriage & Wagon Department
Southern Railway
Bangalore Division
Bangalore - 560 023)

46. Shri M. Raghavendra Achar
Advocate
1074-1075, 4th Cross
2nd Main, Sreenivasaanagar
II Phase
Bangalore - 560 050

47. The Divisional Personnel
Officer
Southern Railway
Bangalore Division
Bangalore - 560 023

48. Shri M. Sreerangaiah
Railway Advocate
No. 3, S.P. Building
10th Cross, Cubbonpet Main Rd
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Enclosed herewith please find a copy of ORDER passed by this
Tribunal in the above said applications on 21-4-89.

Encl : As stated above

Received Copy of the Judgement of 21/4/89
A. Sugunan (Appnt. No 1)

B. K. Venkatesh & S
Deputy Registrar
(Judicial)

Q.C.

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CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 21ST DAY OF APRIL, 1989.

Present:

Hon'ble Mr. Justice K.S. Puttaswamy, Vice-Chairman.

&

Hon'ble Mr. P. Srinivasan, .. Member(A).

APPLICATIONS NUMBERS 1898 TO 1930, 1970 TO 1977 OF
1988, 305 TO 307 AND 336 OF 1989

1. A. Sagayanathan, Major,
S/o B.A. Arul Dass,
2. P. Selvaraj, Major,
S/o M. Donnuswamy.
3. R. P. Renugopal, Major,
S/o A.M. Palanivelu.
4. N. Venkatachalampathy, Major,
S/o Narayanappa.
5. E. Varadan, Major,
S/o Eathiraju Naidu.
6. K. Ramanujam, Major,
S/o Krishnan.
7. M. Muniswamy, Major,
S/o Murugesh.
8. Mohammed Asif, Major,
S/o Mohammed Hussain.
9. Abdul Majeed, Major,
S/o Abdul Khader.
10. H. Padmanabha, Major,
S/o B.V. Hanumanthaiah.
11. Meeraiah, Major,
S/o Guruvaiah.
12. Muthiyalappa, Major,
S/o Narasappa.
13. N. Ramachandra, Major,
S/o Narayanappa.
14. Mohammed Riyaz, Major,
S/o S. Mahaboob.

.. Applicants 1 to 6
in A.Nos. 1898 to 1903
of 1988.

.. Applicants 1 to 8
in A.Nos. 1904 to
1911 of 1988.



(17)

15. S. Sampath Kumar, Major,
S/o P.S. Sivanesan.
16. K. Shivananjaiah, Major,
S/o Kallaiah.
17. Prabhakaran, Major,
S/o Vasunair.
18. R.S. Irudhyaraj, Major,
S/o Sabastin R.
19. V.B. Fletcher, Major,
S/o V. Fletcher.
20. R. Gopalanaidu, Major,
S/o Muniswamy Naidu.
21. Yedurappa, Major
S/o Huchappa.
22. D.T. Venkataramana, Major,
S/o Timmappa.
23. Venkatesha, Major,
S/o Keshappa.
24. D.S. Madanagopal Raju, Major,
S/o D.V. Seshagiri Raju.
25. V. Srinivasa Rao, Major,
S/o Venkoba Rao.
26. C. Annanda Reddy, Major,
S/o R. Muniswamy Reddy.
27. R. Shashidharan, Major,
S/o K. Raman.
28. Abdul Khayum, Major,
S/o Mohammed Sahib, B.
29. C. Cotter, Major,
S/o C.L. Cotter.
30. Shivalingaiah, Major,
S/o Chikkalingaiah.
31. Venkatesha, Major,
S/o Sonnappa.
32. Damodaran, Major,
S/o C. Gopal.
33. Munavar Pasha, Major,
S/o Mohammed Pasha.

.. Applicants 1 to 19
in A.Nos. 1912 to
1930 of 1988.



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34. S.Ramulu, Major.
35. Lakshmaiah, Major.
36. T.Shama Rao, Major.
37. D.Dass, Major.
38. P.Subbarayudu, Major.
39. P.Armugam, Major.
40. M.Eswar Major.
41. S.Venkatappa, Major.

.. Applicants 1 to 8
in A.Nos. 1970 to
1977 of 1988.

Sl.Nos.1 to 14 and 34 to 41 are working as Khalasis and Sl.Nos. 15 to 33 are working as Fitters, Carriage and Wagon Department in S.B.C.Division, Southern Railway, Bangalore.

42. Srinivasan, Major,

43. R.Sadasiva, Major,

44. N.Purushotham, Major.

All are working as Khalasis in SBC Division, Southern Railway, Bangalore.

.. Applicants 1 to 3
in A.Nos. 305 to 307
of 1989.

45. Nataraj, Major,
working as Khalasi in
SBC Division,
Southern Railway,
Bangalore.

.. Applicant in A.No.
336 of 1989.

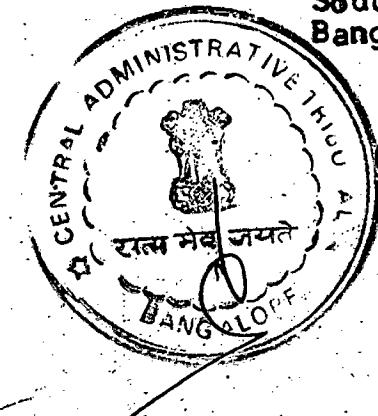
(By Sri M.Raghavendra Achar, Advocate).

v.

The Divisional Personnel
Officer, S.B.C.Division,
Southern Railway,
Bangalore.

.. Respondent
in all Applications.

By Sri M.Sreerangaiah, Advocate.



..4..

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These applications having come up for admission/hearing, Hon'ble Vice-Chairman made the following:

ORDER

As the questions of law that arise for determination in these cases are common, we propose to dispose of them by a common order.

2. Application Nos. 1970 to 1977, 1898 to 1930 of 1988 earlier admitted were posted for regular hearing on 31-3-1989. On that day, Applications Nos. 305 to 307 and 336 of 1989 which had not been admitted earlier posted on that day or on later dates were taken up for hearing, without making formal orders of admission, as agreed to by both sides.

3. All the applicants initially commenced their career as 'casual labourers or Substitute Khalasis' on different dates from 1970 and onwards in one or the other divisions of Southern Railway. When working as 'Substitute Khalasis', they were selected or empanelled for regular appointments as Khalasis in the Railways on different dates. On that basis, they were later appointed as regular Khalasis from different dates.

4. One Sri S.Yates, who was similarly appointed as Substitute Khalasi was empanelled and appointed in due course as a regular Khalasi on or about 31-12-1976. What was true of Yates was also true of many others.

5. In Office Order No.Y/P 524/W/C/Mech dated 23-5-1983 the Divisional Railway Manager, Mysore Division, Mysore ('DRM') promoted 151 Khalasis as Wagon Lubricant Attendant



(Skilled) ('WLA') in the then higher time scale of Rs.260-400 from 1-8-1978 on the terms and conditions stipulated in that order. Sri Yates, who claimed to be senior to some of them but had not been promoted, approached this Tribunal in 1986 in Application No. 518 of 1986 for directions to promote him to the post of WLA or Fitter from the date his immediate juniors were promoted. On 6-3-1987 a Division Bench of this Tribunal consisting of Sri L.H.A.Rego, Member (A) and Sri Ramakrishna Rao, Member (J) allowed the said application (Annexure-A in A.Nos. 1970 to 1977 of 1988 to the annexures of which we will hereafter refer). The operative portion of the order made in this case reads thus:

"20. In the result, we make the following order:

(i) We direct the respondents to assign deemed dates of promotion to the applicant, to the posts of Wagon Lubricant Attendant/Skilled and Fitter, from the dates his immediate junior (with reference to his length of service in the post of Substitute Khalasi) was promoted to these posts and re-determine his seniority and refix his pay accordingly.

(ii) Since, however, the applicant has not shouldered responsibility in these higher posts, he shall not be entitled to arrears of salary, till the date he is actually promoted to the post of Fitter according to his seniority, re-determine as above.

(iii) This order be given effect to within a period of one month from the date of its receipt.

21. The application is allowed in the above terms but we make no order as to costs".

On the basis of this order, Varadarajan and 10 others approached this Tribunal on 8-9-1987 in Applications



Nos. 779 to 789 of 1987 for similar reliefs. On 20-6-1988 a Division Bench of this Tribunal consisting of one of us (Justice K.S.Puttaswamy) and Sri L. H.A. Rego, Member (A) allowed them in these terms:

"16. In the result, we make the following:

ORDER

1. We declare that these applications are governed mutatis mutandis, by the ratio of the decision in Yate's case.
2. Consequently, we direct R1 and R2 to notionally promote the applicants as Fitters, from the dates their immediate juniors (with reference to their length of service as Substitute Khalasis) from among R3 to R13, were promoted to these posts and to determine their seniority and pay accordingly, taking into account the increments that would have accrued to them during the intervening period.
3. The applicants, however, will not be entitled to any arrears of this account, not having actually shouldered responsibility in the posts of Fitters.
4. This order be complied with, within a period of two months from the date of its receipt.
5. The applications are disposed of in the above terms, but with no order as to costs.

We are informed that these orders have not been appealed by the Railway Administration.

6. Applicants in Applications Nos. 1970 to 1977, 1912 to 1930 of 1988 have been promoted as Fitters from 14/23-5-1986. But, the other applicants have not so far been promoted.

7. In these applications made on the dates set out below impleading the Railway Administration only, the applicants have sought for a declaration that they are governed by Yate's case and the reliefs granted by this



(11.78)

Tribunal in Yates and Varadharajan's cases be extended to them on the ground that they are seniors to them and those promoted on 23-5-1983 by the DRM:

<u>Application Nos.</u>	<u>Date of Filing</u>
1898 to 1930 of 1988	5-12-1988
1970 to 1977 of 1988	12-12-1988
305 to 307 of 1989	28-3-1989
336 of 1989	31-3-1989

8. In their reply, the respondents have inter-alia urged that these applications were barred by time; that those promoted on 23-5-1983 by the DRM, who would be affected by granting the reliefs were necessary parties and that on merits, they were not entitled to the reliefs sought by them.

9. Sri M.Raghavendrachar, learned Advocate has appeared for the applicants in all the applications. Sri M.Sreerangiah, learned Advocate has appeared for the respondents in all those cases.

10. On the pleadings and contentions urged before us, the following points arise for determination:

- (1) Whether the applications made under Sec.19 of the Act were in time or not?
- (2) Whether the persons promoted on 23-5-1983 by the DRM were necessary parties to these applications, If so, whether their non-joinder disentitles the applicants for any relief?
- (3) Whether the applicants are entitled for the declaration and directions sought in their applications?

We now proceed to examine these points in their order:

RE: POINT NO.1



11. Sri Sreerangaiah at the threshold has urged that these applications made on the dates noticed by us seeking

(19)
promotions on the basis of the order dated 23-5-1983 of the DRM from 1-8-1978 were barred by time and were liable to be dismissed in limine.

12. Sri Achar has urged that these applications were in time.

13. We have earlier noticed that the DRM in his order dated 23-5-1983 had promoted 151 persons as WLA from 1-8-1978. That order omitting the names of those promoted which is not material and on which there is no controversy also, reads thus:

" In terms of Railway Board's letter No.E(PQA) I-82/JC/1 dated 13-11-1982 received under CPO/MAS letter No.P(PC)528/G/Vol.II of 29-11-1982, the following employees are fitted against the reclassified posts of WLAs/Skilled in scale Rs.260-400 retrospectively from 1-8-1978 purely on proforma basis. They are also granted further increments provisionally. Payment of lumpsum arrears for the period from 1-4-1980 to 31-12-1981 at Rs.25/- p.m. subject to a maximum of Rs.400/- wherever admissible is indicated against each. Arrears amount is payable for the actual months during which an employee was on duty. Even if an employee was on duty for a day during the month, full month will count for admissibility. Period of LAP and LHAP will be considered as duty for this purpose. Arrears due to higher fixation is payable from 1-1-1982."

In this order, the DRM had promoted 151 persons as WLA from 1-8-1978.

14. Section 21 of the Act which stipulates the period of limitation for making applications under the Act reads

"21. Limitation:- (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;



(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later."

This section is a complete code in itself.

15. In our country as in all civilised countries, laws regulating limitation have been enacted.

16. The Limitation Act, 1963 (Central Act No. 36 of 1963) that came into force from 1-1-1964 had replaced earlier Indian Limitation Act, 1908 (Central Act IX of 1908) regulating the periods of limitation for suits and other applications in Courts. The juristic concepts and the principles enunciated in the interpretation of these Acts are applicable in deciding the scope and ambit of Section 21 of the



17. Justice Story in his 'Conflict of Laws' 8th Edition, page 794 has propounded the object of the limitation Acts in a civilised society in these words that have become classical:

" Statutes of limitation are statutes of repose, to quiet title, to suppress frauds and to supply the deficiency of proofs arising from the ambiguity and obscurity or the antiquity of transactions. They proceed upon the presumption that claims are extinguished or ought to be held extinguished whenever they are not litigated within the prescribed period. They quicken diligence by making it in some measure equivalent to right. They discourage litigation by burying in one common receptacle all the accumulations of past times which all the accumulations of past times which are unexplained and have now from lapse of time become inexplicable. It has been said by John Voet that controversies are limited to a fixed period of time, lest they should be immortal, while men are mortal".

The Judicial committee of the Privy Council in LUCHMEE v. RANJEET (20 WR 375 13 BLR 177) dealing with the earlier Limitation Act in the country stated the object of that Act in these words:

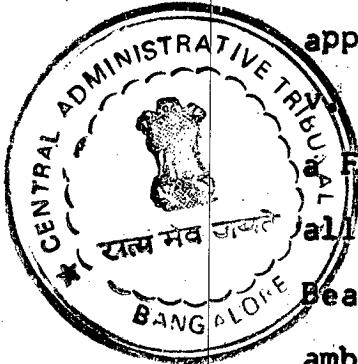
"The object of the Limitation Act is to quiet long possession and to extinguish stale demands".

In NAGENDRA NATH DEY AND ANOTHER v. SURESH CHANDRA DEY AND OTHERS (AIR 1932 PC 165) the Judicial Committee of the Privy Council stated the rule of construction to be followed in interpreting articles of the Act in these words:

"The fixation of periods of limitation must always be to some extent arbitrary, and may frequently result in hardship. But, in construing such provisions equitable considerations are out of place and the strict grammatical meaning of the words is, their Lordships think, the only safe guide".

Our Supreme Court and the High Courts in the country have approved these principles. In MEHARBAN KHAN AND OTHERS v. UNION OF INDIA AND OTHERS [1988] 8 A.T.C. 575, a Full Bench of this Tribunal had exhaustively reviewed all the earlier cases and had stated these very principles.

Bearing these principles, we must ascertain the scope and ambit of Section 21 of the Act and then apply the same to the facts of the cases.



18. Section 21 (1)(a) stipulates that an application under Section 19 of the Act for redressal of grievances shall be made within one year from the date ~~—~~ the final order has been made against the concerned person. This section stipulates or allows a liberal period of one year from the date of the final order.

19. Section 21(1)(b) of the Act which deals with reckoning of representations referred to in Section 20(2) of the Act, has no application to these cases and, therefore it is unnecessary for us to ascertain its scope and ambit.

20. Section 21(2) regulates the period of limitation to those cases to which Section 21(1) does not apply. This section deals with limitation for filing applications, ^{where} on the constitution of this Tribunal and ~~no~~ legal proceedings had been instituted on or before 1-11-1985, on which day, this Tribunal came into existence. Section 21(2) stipulates that an application for redressal of grievance that arose prior to the constitution of this Tribunal, however restricting the same for a period of three years before the constitution of this Tribunal, shall be made within a period of one year from the date of the final order or within a period of 6 months whichever is earlier.

21. In reality and in substance, the applicants claim promotions on the basis of the order made by the DRM on 23-5-1983. On the fact that the applicants were not promoted and others who are stated to be their juniors were promoted by the DRM on 23-5-1983, there cannot be any dispute.



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We need hardly say that this is no way altered by the decisions rendered by this Tribunal in Yates and Varadarajan's cases. In other words, the applicants' grievance arose on 23-5-1983 on which day, the DRM made his order in favour of others. This order, which is the final order, is the starting point of the grievance of the applicants or the starting point for computing the limitation under the Act. On the terms of Section 21 of the Act, the applicants should have made these applications, in any event, on or before 30-4-1986.

22. We have earlier noticed that these applications are made long after 30-4-1986. From this it follows that these applications made under Section 19 of the Act are clearly barred by time.

23. On the foregoing discussion, we answer point No.1 against the applicants.

RE:POINT NO.2.

24. Sri Sreerangiah has urged that those promoted by the DRM on 23-5-1983 over whom the applicants claim promotions on the ground that they are seniors to them, were necessary parties to the proceedings and that in their absence these applications were liable to be dismissed in limine.

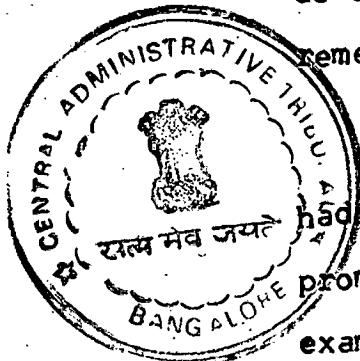


25. Sri Achar refuting the contention of Sri Sreerangiah urged that for granting the declaration sought by the applicants in terms of the earlier orders, all those promoted by the DRM on 23-5-1983 were neither necessary nor proper parties and that in their absence

also the reliefs can be granted by this Tribunal.

26. We have earlier noticed the reliefs sought by the applicants. If the reliefs sought by the applicants are to be granted, then they would all become seniors to those promoted on 23-5-1983, which necessarily means that all of them would be adversely affected Vide: Para 5 of the Full Bench decision dated 31-3-1989 of this Tribunal in T.S.GOPI AND OTHERS v. DEPUTY COLLECTOR OF CUSTOMS, CUSTOMS HOUSE, COCHIN AND OTHERS - O.A.Nos. K-238 of 1987 ETC. 7. From this it follows that all those promoted on 23-5-1983 are necessary parties to these proceedings. But, strangely the applicants have not impleaded them. On this objection being raised by the respondent in his reply which was also pressed at the hearing, the applicants did not seek leave to implead them and remedy this defect. If that is so, then we do not think that we should give an opportunity to the applicants to implead them and remedy this defect. We are of the view that the principles enunciated by the Full Bench of this Tribunal in Gopi's case should only be read as only affording an opportunity to the applicants to remedy the defect and cannot be read as directing this Tribunal to compel the applicants to remedy that defect.

27. In Yates and Varadarajan's cases, those applicants had impleaded certain persons against whom they claimed promotions and seniority. On that, this objection was not examined and decided in those cases. But, that is not the position in the present cases.





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28. As the necessary parties have not been impleaded and notified, even assuming that there is any merit in the claims of the applicants, then also these applications are liable to be dismissed for want of necessary parties.

29. On the foregoing discussion, we answer point No.2 against the applicants.

RE: POINT NO.3.

30. Sri Achar has urged that the cases of the applicants were in all fours with Yates and Varadarajan's cases and all of them were entitled for the very reliefs granted in those cases.

31. Sri Sreerangaiah disputing the correctness of the contention urged by Sri Achar has sought to distinguish these cases on more than one ground.

32. We have earlier found that these applications were barred by time and reliefs even if well founded cannot be granted for want of necessary parties. Both these conclusions go to the root of the matter and affect our jurisdiction to examine and decide the merits. If that is so, then we will not be justified in examining the merits and pronounce our views. We, therefore, decline to examine this point.

33. On our answers on points 1 and 2 these applications are liable to be dismissed. We, therefore, dismiss these applications. But, in the circumstances of the cases, we direct the parties to bear their own costs.

Brijendra Singh Sd/-
VICE-CHAIRMAN (JD/21/2)

Sd/-

MEMBER(A) 101/1

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE (Note: I have signed this order on 18-4-1989 at Bangalore as I will not be in station and will be in Calcutta on 21-4-1989 to which date these cases stand posted for pronouncement.)

Sd/-
MEMBER(A) 181410