

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Commercial Complex(BDA)

Indiranagar

Bangalore - 560 038

Dated 16 AUG 1988

APPLICATION NOS. 902 to 913 & 985/88(F)

Applicants

Shri Narasimha Murthy & 12 Ors

V/s The Divisional Railway Manager,
Southern Railway, Bangalore & another

To

1. Shri Narasimha Murthy
1/11, 2nd Cross
Gopal Puram
Magadi Road (PO)
Bangalore - 560 023

2. Shri Sukumaran
V/142, 6th Cross
Sriramapuram (PO)
Bangalore - 560 021

3. Shri K. Thirunavakarasu
C-159, I Main Road
Ramachandra Puram (PO)
Bangalore - 560 021

4. Shri D. Sunder
Jyothi Studio
5th Main, Vth Cross
Ganganahally
Bangalore

5. Shri C.N. Rajasekar
19, I Cross Road
II Main, Jagajeevanaram Nagar
Bangalore - 560 018

6. Shri Saleem
207/B, Railway Colony
Bangalore - 560 023

Respondents

7. Shri E. Subramani
H/67, 4th Main Road
Ramachandra Puram
Bangalore - 560 021

8. Shri S. Venkatesh
No. 10, II Cross
Gopalapuram, Magadi Road
Bangalore - 560 023

9. Shri Ravindran
C-159, I Main Road
Ramachandrapuram
Bangalore - 560 021

10. Shri Selvam
468, Lakshmana Puri
Gandhinagar
Bangalore - 560 009

11. Shri G. Murthy
88/A, Railway Fireman Quarters
Bangalore - 560 023

12. Shri T. Krishnamurthy
No. 13, Car Street, 6th Cross D
Ulsoor
Bangalore - 560 008

13. Shri S. Sampath
C/o Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

14. Shri M. Raghavendra Achar
Advocate
1074-1075, Banashankari I Stage
Sreenivasanagar II Phase
Bangalore - 560 050

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

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

17. Shri M. Sreerangaiah
Railway Advocate
3, S.P. Building, 10th Cross
Cubbonpet Main Road
Bangalore - 560 002

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Enclosed please find herewith copy of ORDER passed by this Tribunal in the
above said applications on 9-8-88.

Encl : As above

H. S. Rao
H. S. Rao
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE NINETH DAY OF AUGUST 1988

Present: Hon'ble Justice Shri K.S.Puttaswamy

• Vice Chairman

Hon'ble Shri P. Srinivasan

• Member(A)

APPLICATIONS NO. 902 TO 913/87(F) AND
985/88(F)

Narasimha Murthy,
S/o Puttappa,
1/11, 2nd Cross,
Gopal Puram,
Magadi Road (PO),
Bangalore-23.

Sukumaran S/o Shanmugam,
V/142, 6th Cross,
Sripamapuram (PO),
Bangalore-21.

K.Thirunavakarasu,
S/o Kalimuthu
C/o Gopalakrishnan,
C.159 I Main Road,
Ramachandra Puram (PO),
Bangalore-21

D. Sunder S/o Daniel,
Jyothi Studio,
5th Main Vth Cross,
Ganganahally,
Bangalore City.

C.N.Rajasakar S/o M.H.Nalliah,
19, I Cross Road,
II Main Road, Jagageesanram
Nagar, Bangalore-18.

Saleem S/o Abdul Satter,
207/B, Railway Colony,
Bangalore-23.

E.Subramani S/o R.Elumalai,
H/67, 4th Main Road,
Ramachandrapuram, Bangalore-21.

S.Venkatesh S/o Siddappa,
No.10, II Cross, Gopalpuram,
Magadi Road,
Bangalore-23.

Ravindran S/o Srinivasan,
C-159, I Main Road,
Ramachandrapuram, Bangalore-21.

.. Applicants

P. S. Srinivasan

Selvam S/o Kellapuri,
468, Lakshmana Purai,
Gandhi Nagar, Bangalore-9.

G. Murthy S/o Govindaswamy,
D No.88/A Railway Fireman Qrs,
Bangalore-560 023.

T.Krishnamurthy S/o Thimmarayappa,
No.13, Car Street, 6th Cross,
Ulscoor, Bangalore-8

Applicants in A
No.902 to 913/87(A)

S.Sampath S/o Arogyaswamy,
C/o Shri M.Raghavendra Achar,
Advocate, No.1074, and 1075,
4th Cross, Srinivasanagar,
II Phase, Banashankari I Stage,
Bangalore-560 050.

Applicant in
A No.985/88(F)

(Shri M.R.Achar . Advocate)

v.

The Divisional Railway Manager,
Southern Railway, Personnel Branch,
Bangalore Division, Bangalore-560 023.

The Divisional Personnel Officer,
Southern Railway, Bangalore Division,
Bangalore.

Respondents

(Shri M.Srirangaiah .. Advocate)

These applications came up for hearing before this Tribunal
on 2nd August 1988. Hon'ble Shri P. Srinivasan, Member (A) made
the following:

ORDER

All the 13 applicants before us have an identical grievance
and, therefore, all these applications are considered and disposed
of by this common order. Shri M.R. Achar, learned counsel for
the applicants and Shri M. Srirangaiah, learned counsel for the
Respondents have been heard. With the consent of counsel, A
No.985 of 1988(f) which was listed for admission was also
heard on merits.

2. Ten out of the 13 applicants before us were engaged as
Casual Labourers (CL) in 1981 in the Bangalore Division of
Southern Railway but were discharged soon after in the same

P. D. S. G.



year after rendering service on daily wages for periods ranging from 5 to 15 days. In respect of the remaining 3 viz., Narasimha Murthy, Saleem and S. Sampath - Applicants No. 902/87, 907/87 and 985/88 - the length of service put in by them before they were discharged is not available. But it is common ground that they were also discharged in the same year i.e., in 1981. Thereafter, a letter dated 17.2.1983 was issued from the Office of the Divisional Railway Manager, Personnel Branch, Bangalore Division (DRM) to the Chief Ticket Examiner, Bangalore City, Meter Gauge Section (CTXR SBC/MG). It reads as follows:

"Sub:- Retrenched unapproved candidates.
Ref:- Your letter No. Nil dated 8/2/83.

The names of 34 (Thirty Four) retrenched unapproved candidates referred to in your letter cited above may be registered for substitute Class IV appointment in future vacancies under your control. It should be ensured that their names should find a place below all the approved candidates referred to you and registered already by you in the Priority register maintained at your end. The names are shown in the order of merit based on the actual number of days they worked under you earlier and in no case, the juniors should be engaged ignoring seniors".

This was followed by a list of 34 persons which included 10 of the applicants now before us, but not three others viz. Narasimha Murthy, Saleem and Sampath. At the end of the list it was recorded: "This has the approval of the DRM/SBC" and the letter was issued in the name of the Divisional Personnel Officer, Bangalore City (DPO/SBC). It is this letter which gives the number of days the 10 applicants included therein and others had actually worked in the past. Another letter dated 12.11.1984 issued from the Office of the Divisional Mechanical Engineer, Bangalore City (DME/SBC) addressed to the Chief Ticket Examiner, Bangalore City, Broad Gauge Section (CTXR/SBC/BG) stated that the DRM had approved of the reengagement

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of 35 ex-Casual Labourers "as casual labourers" on usual daily rates of wages. "On completion of 120 days of continuous service, they will be eligible for monthly scales of pay". The list of 35 persons set out in that letter included all the 13 applicants before us. After listing out the 35 names, the letter goes on to say "please reengage the above after verification of the bona fides of these ex CLS with reference to LTI register by you personally, subject to their medical fitness in B-1 and verifying their educational qualification, fathers name, particulars of previous work and caste through the original certificates as produced by them." A third letter which is also relevant to the present dispute is one dated 14.11.1984 issued by the CTXR/SBC/BG to CTXR/SBC/MG. Referring to the earlier letter dated 12.11.1984 issued by the DME SBC/which we have extracted above, this is what the CTXR/SBC/BG wrote: "with reference to DME/SBC letter, arrange to direct the following persons with relevant records for reengagement as casual labourers on daily rate of wages to report to this office within ten days (at 7 Hrs of the working day) within the ten day period). A letter of identity may also be followed to each". Names of 25 persons are listed in that letter which included 12 of the applicants before us but not S.Sampath, applicant in A No.985/88. The complaint of the applicants is that in spite of these letters which indicated that all of them had been approved for reengagement as CL by the DRM, none of them has been engaged so far while certain others had been reemployed.

3. Shri M.R.Achar, learned counsel for the applicants

T. f. T. C.



submitted that under the instructions issued by the Railway Board from time to time, CLs whose names are registered in the Unit Offices with the approval of DRM have to be given preference for reengagement over others and such reengagement should also follow the order in which the names appear in the register. The three letters referred to above showed that the names of all the 13 applicants before us had been included in the register with the approval of DRM/SBC. As such they were entitled to reengagement according to their serial number in the register. The Respondents had flouted the instructions of the Railway Board by engaging certain others. The names of those who were so engaged were, Souri Muthu, V. Vasavan, L.A.D'Silva, B.J. Fernandez, S.Srinivasan, S. Jayaraj, Alimulla Khan, S.Ramanatha Rao, S. Alfunnisa, Smt. Jayamma, Honnegowda, Krishnappa, Buttaramaiah, Gangeyappa, M. Ramu, Syed Meethulla, O. Norjamel Ahmed, V.K. Ravindranath, Basheer Ahmed, G. Loutes, S.P. Yates, P.J. Hemalatha, G. Leena, Anitha Ananth Bhatt, A.P. Thulsai Dashhimal, K.R. Venkatesh, G. Subramani, Sathish Chandra and Krishna Prasad. According to Shri Achar these persons were unapproved candidates. But they had been preferred for employment to the applicants who were on the approved list of CLs for reengagement. The instructions of the Railway Board had been compiled in a manual entitled "Rules Regulating Recruitment and other conditions of Casual Labour and Substitutes". Rule 8 thereof requires that "names of all CLs, wherever employed should be maintained in the registers, by division strictly in the order of taking up casual employment at the initial stage" and under Rule 9, "in each unit of engagement of CL, a register of specimen thumb impression for temporary casual and



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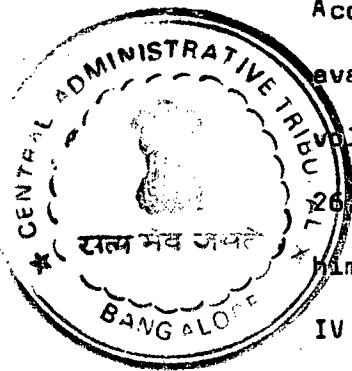
substitute labour is required to be maintained." It was in pursuance of the said Rule 8 of the Manual that the three letters mentioned above had been issued requiring the entry of names of CLs listed therein in the register in the order mentioned in those letters. Once a persons name is entered he is entitled to be reengaged according to his ranking in the register before others who appear below his name in the register and to the exclusion of others not included in the register. However, the respondents had not followed this procedure. In their reply the Respondents had urged that Sowri Muthu, Vasavan, L.A.O'Silva, B.J. Fernandez, S.Srinivasan, S. Jayaraj and one more person M. Renu had been reengaged because they had worked for more than 120 days as substitute CLs, while none of the applicants had worked for more than 15 days. Respondents had also urged that three more persons viz., Alimulla Khan, Alfunnisa and Smt. Jayamma had been appointed on compassionate grounds. The Respondents had further contended in one of their replies that Honnegowda, Krishnappa, Andanappa, and AM Ravindranath had been absorbed as Hamals in the Traffic Department in the 10% quota available for such absorption from gangmen of the Engineering Department. They had also stated that S.P. Yates, G.Leena, P.J. Hemalatha and Anita Ananth Bhat had been appointed in the quota reserved for outstanding sportmen. It was also claimed that A.P.Tulsi Dashimal and G. Subramani had been appointed against the ex-servicemen quota while K.R.Venkatesh and Satish Chandra had been appointed to make up the short-fall in the quota of Scheduled Tribe candidates

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according to roaster points. Shri Achar contended that these explanations should not be accepted because the ^M retrenched register of ^{retirement} of CL had to be the basis of and selection ~~of~~ candidates whose names do not appear in the register cannot have priority over those whose names appear in the register. Engagement of persons on compassionate ground could not be made in preference to those whose names appear in the register of approved candidates. The Respondents were trotting out some reason or the other for excluding the applicants from appointment. No doubt the applicants had rendered only 15 days of service as CLs in the past but they had a right to be reengaged in the same capacity so that on completing 120 days of service on daily wages they would be entitled to monthly salary and eventually to absorption as regular Khalasis on the basis of their seniority among the CLs. This valuable right of theirs was being denied by the Respondents.

According to Shri Achar, even now, vacancies of Khalasis were available and the DME, Bangalore City, had actually invited volunteers for engagement as CL by his letter dated 26.10.1987. According to the figures made available to him, Shri Achar urged, that there were 165 vacancies of Class IV Khalasis available in the Mechanical Branch of the Bangalore Division. The Respondents had also stated in their reply that some persons who were rendered surplus ^M Engineering in the Traffic and Mechanical Department had been redeployed in vacancies in the Mechanical Department of Bangalore Division. They should not have done this ignoring the



P. J. V. S.

claims of the applicants who had earlier worked in the Mechanical Department and had been discharged from that Department. If persons rendered surplus in the Traffic and Engineering Department could be accommodated in the Mechanical Department, the applicants could also be accommodated in vacancies available in the Electrical Department. The applicants had not impleaded in these applications the persons already appointed because the applicants could be easily accommodated in the existing vacancies without disturbing those who had already been appointed. Shri Achar, therefore, sought directions from this Tribunal to respondents to give all the applicants appointment immediately.

4. Shri M.Srirangaiah, learned counsel appearing for the respondents submitted in the first place that the three letters relied on by Shri Achar were not letters of appointments. The result of these letters were merely to include the names of the persons listed therein in the relevant registers for consideration for appointment as and when need arose. These letters, therefore, did not confer any right of appointment on the persons named therein including the applicants. The applicants had all put in only 15 days service or less in 1981 and that too as daily wage labourers to meet the rush of work. They were not eligible for absorption as regular Khalasis and even in regard to appointment of CL they could not claim priority over others who had put in longer service. The Railway Board had issued instructions that the total number of CLs including those in construction should be pegged to the actual number available upto 31.12.1983



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after empanelment and that attempt should be made to reduce the number. The applicants had challenged the appointments of certain other persons in preference to them. Shri Srirangaiah pointed out that apart from Sowri Muthu, Vasavan, L.A.O'Silva, B.J. Fernandez, S. Srinivasan, G. Jayaraj and M. Renu who were reengaged as CL, the others had actually been absorbed in regular vacancies of Khalasis. The applicants cannot lay claim to such regular vacancies because their earlier service as CL was 15 days or less. For appointment against regular vacancies there was provision for recruiting persons on compassionate grounds and there were also quotas prescribed for absorption from different sources like outstanding Sportsmen, ex-servicemen and Gangmen of Engineering Department. In addition the Administration had to ensure that there was no deficiency in filling the quotas prescribed for ST candidates. All the regular appointments had been made from these quotas.



So far as the 7 persons who were reengaged as CL were concerned, all of them had put in more than 120 days as substitute CLs. In fact the names of Sowri Muthu and Vasavan who were reengaged as CL appeared in the letter dated 17.2.1983 relied upon by the applicants, both of them had completed well over 120 days as CL already. The applicants cannot obviously claim priority over them for reengagement. In view of the restriction on appointment of CL beyond the number as it stood on 31.12.1983, the applicants who had put in very little service as CL could not be reengaged in the same capacity even though their names have been registered for engagement as and when need arose.

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Referring to the case of Ramanatha Rao, Shri Srirangaiah submitted that he had been appointed as a substitute Khalasi with the approval of the General Manager (GM). His father Sh.R. Shivaji Rao was working in the Railway Protection Force and was due to retire in 1985. Shri Ramanatha Rao had made an application to the Minister of State for Railways submitting that after the retirement of his father the responsibility of maintaining the family would fall on him. Therefore, he requested that in view of his father's service in the Railway he should be considered for appointment. After considering the merits of his application which had been forwarded by the Minister's office to the Railway Administration, the DRM Bangalore proposed to the GM that Shri Ramanatha Rao be appointed as substitute Khalasi. As the engagement of new faces required the approval of the GM, the case of Shri Ramanatha Rao was submitted to the GM who approved his appointment as substitute Khalasi. That appointment was in ~~xxxextxxx~~ the special circumstance and it was made after due consideration of the merits of the case and the applicants cannot be allowed to challenge it. Shri Srirangaiah, therefore, submitted that these applications deserved to be dismissed.

5. We have considered the rival contentions carefully. We must straightaway express our agreement with the contention of Shri Srirangaiah that the three letters relied upon on behalf of the applicants do not purport to give appointments to the persons listed therein. On the basis of these letters.

P. f. -- kc



the persons listed therein did not straightaway acquire a right of appointment. All that these letters did was to direct that the names of the persons contained therein ~~should~~ be entered in the registers for future appointment as CL as and when need arose. No automatic claim of right of appointment could be founded on these letters. Therefore, the point that remains to be examined is whether the appointment of other persons which the applicants have challenged was right and whether the applicants had a better right of appointment than those so appointed. Here also the applicants cannot challenge the appointments to regular vacancies of Khalasi because the applicants themselves had not acquired the right to regular appointment since their service as CL was hardly 15 days or less. The regular appointments have been made from various quotas as prescribed in the rules and to make up the deficiency in the quota of ST candidates appointed earlier. The legality of such appointments cannot be questioned. Shri Achar submitted that many of the applicants belonged to Scheduled Caste and the respondents had not shown that the quota of appointment reserved for Scheduled Castes had been filled in with reference to roster points. He challenged the respondents to produce the roster to show that the points therein available to SC candidates had been filled up because many of the applicants before us were SC candidates who had a right to be considered against the SC points in the roster. We are not prepared to undertake a fishing expedition on the unfounded assumption that the SC quota may not have been properly filled in. On the other hand since the respondents have made all appointments to fill up

P. D. L.



the deficiency in appointment of ST candidates, we have to assume, unless the contrary is shown, that the quota for SC candidates for regular appointment had been duly filled up. We cannot at this stage undertake a roving enquiry. So far as the reengagement of persons as CL are concerned the respondents have shown that all of them had longer length of service as CL than the applicants. We, therefore, see nothing wrong in their being preferred for reengagement to the applicants. So far as the case of Shri Ramanatha Rao is concerned, we have perused the records relating to his appointment as substitute Khalasi and we are satisfied that it was made with the sanction of proper authority given after a detailed consideration of the merits of the case. We are, therefore, not inclined to accept the challenge to his appointment at this stage. It may be unfortunate that the applicants after having once been engaged as CL could not be taken back in that capacity later, but in a situation where, in this country there are thousands of persons clamouring for employment we cannot isolate the cases of the applicants and say that they alone should be reengaged. We have indicated above that there is no illegality in the appointments of others persons as CL and particularly that seven of them had put in longer service than the applicants and the eighth one had been appointed after due consideration by the proper authority circumstances in the special/~~exception~~ of his case. These applications, therefore, have to fail.



D. K. Iyer

6. We may here also refer to a decision of this Tribunal rendered on 31.7.1987 in A No.1545 to 1580/86 on which reliance was placed by Shri Achar. In that case applications for posts of Khalasis in the Electrical Engineering Branch in Bangalore Division were called for. Out of 179 applications a Screening Committee found 84 suitable for appointment. 72 of them were empanelled for appointments and 12 were kept as stand-by. In preparing the select panel, the 100 point roaster for recruitment of SC/ST candidates had also been duly observed. All the empanelled candidates were asked to report to the authority concerned and were also medically examined. At that stage, 39 other persons who were found surplus in the Electrical Branch were redeployed and appointed in that capacity in the existing vacancies. The applicants, who were among those who had been empanelled, challenged the appointments and submitted that their names should be considered in the order in which they appear in the panel. It was in these ~~situation~~ circumstances that this Tribunal directed that the posts of Khalasis in the Electrical Branch should be filled up from out of the empanelled candidates. As will be seen, in that case applications were invited for the posts in question, the applicants were interviewed by a Screening Committee and 72 of them had been specifically empanelled for appointment to the vacancies which existed at the time. In the present case, the applicants did not apply for any specific vacancies and were not put in a panel for appointment against such specific vacancies. Their names were merely recommended for appointment in the future as CL as and when need arose. Thus the facts of the present case are materially different from those on which this Tribunal gave its decision



P. D. - 13 - 4

in A No.1545 to 1580/86. That decision, therefore, has no application to the present case.

7. We are also of the view that the absorption of persons working in one Department in another Department on their being rendered surplus in the former Department does not suffer from any legal flaw. Shri Achar stated that persons rendered surplus in other Departments had been absorbed in vacancies in the Mechanical Department in which the applicants had actually worked and contended that the applicants had a better right for appointment in the Mechanical Department and should have been so appointed. We are unable to accept this contention. Even in the Government of India there is a Surplus Cell to look after the interest of persons rendered surplus in the Department in which they are actually working.

To prefer ~~though~~ rendered surplus to others who had put in short service earlier like the applicants and had been retrenched thereafter does not, in our opinion, amount to illegality.

Shri Achar also stated that there are vacancies of Khalasis even now in the Mechanical Department for which applicants can be considered. Respondents deny this and have also submitted as stated above that recruitment of fresh CL for which alone the applicants can be considered, cannot be made beyond the number which existed on 31.12.1983 and has to be progressively reduced. We have no reason to doubt this statement of the Respondents. We are ~~not~~ ^{of the view} that the applicants, even on the basis of the letters relied upon by them, are not eligible for appointment to regular vacancies, even if such exist.

P. S. U.C.



8. In the light of the above all the applications are dismissed. Parties to bear their own costs.

Sd/-

VICE CHAIRMAN

3/8/82

Sd/-

MEMBER (A)

10/1/82

bav

TRUE COPY



~~for H. S. Halli 16/8~~
DEPUTY REGISTRAR (JD/L)
CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE