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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH.

Original Application No. 721/91

Transfer Application No.-----

Date of decision 7-7-1993

D.B.Gaikwad  
J.B.Kharate

Petitioner

Mr.G.S.Walia for the applicants Advocate for the Petitioner

Versus

U.O.I. & Ors.

Respondent

Mr.J.G.Savant

Advocate for the Respondent(s)

Coram :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri M.Y.Priolkar, Member(A)

1. ~~Whether the Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *No*
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

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*[Signature]*  
(M.Y.PRIOLKAR)  
M(A )

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.721/91

1. D.B.Gaikwad

2. J.B.Kharate

C/o.G.S.Walia,  
Advocate High Court,  
16, Maharashtra Bhavan,  
Mazzanine Floor, Bori  
Masjid Road, Behind  
Handloom House, Fort  
Bombay - 400 001.

.. Applicant

-versus-

1. Union of India

through  
General Manager,  
Central Railway,  
Bombay V.T.  
Bombay - 400 001.

2. Chief Workshop Manager,  
Central Railway Locomotive  
Workshop, Parel,  
Bombay.

3. Senior Mechanical Engineer,  
(Modernisation)  
Central Railway Locomotive  
Workshop,  
Parel, Bombay - 400 012.

.. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande,  
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.G.S.Walia  
Advocate for the  
Applicant.
2. Mr.J.G.Savant  
Counsel  
for respondents.

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O.A.721/91

ORAL JUDGMENT:

Date: 7-7-1993

(Per M.Y.Priolkar, Member(A))

The two applicants in this case were appointed as Khalasis in the scale of Rs.750-940 on 4-9-1984 in the Parel Workshop of the Central Railway. It is not in dispute that following the usual practice, the applicants were initially posted to the Yard Shop and thereafter they were asked to give their preferences for working in any shop of their choice. It is stated that there are 18 major shops and also a number of minor shops in the Parel Workshop and the applicants gave their preferences for Motor Workshop as they had driving licences for heavy motor vehicle. However, since there were no vacancies in the Motor Workshop at that time, they were posted to Modernization Cell, which is stated to be a part of the Millwright Shop. In December, 1990, however, the sanction for the posts in the Modernisation Cell is stated to have expired and therefore the applicants were posted to Motor Shop. But following protests from the staff already working in that shop that their seniority and further promotion prospects will be adversely affected, the Administration cancelled the order of the posting of the applicants to the Motor Workshop. The applicants were thereafter posted to Millwright shop but they still continue in Modernisation Cell as a result of interim stay granted by the Tribunal.

2. The grievance of the applicants is that inspite of their preferences they have not been posted to the shop of their choice whereas

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a number of their juniors have been posted to Motor Workshop whenever vacancies occurred there.

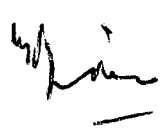
3. Respondents have stated that the applicants had no legal right for posting to any particular shop because it was only a practice followed in the department of obtaining preferences and posting employees accordingly subject to the interest of Administration. They have also stated that the practice was that if the vacancy arose within two to three years of initial appointment employees were given their choice but if because of lack of vacancy an employee could not be accommodated within this period, they were posted to the shops where they had acquired the relevant experience in the interest of work. The posting of the applicants to the Millwright Shop is therefore sought to be justified on the basis that there had been no vacancy in the Motor Shop till 1987 i.e. for 3 years after the initial appointment of the applicants and that the experience required in the Millwright Shop is the same as that of Modernisation Cell and this posting does not involve any changes of place of work as both modernisation cell and Millwright shop are under the same roof. They have also stated that in the year 1984 when the applicants were recruited, there were a total of 156 Khalasis appointed along with them out of whom seven including the applicant had indicated their preference for posting in the Motor Workshop. Because of lack of vacancies none of these seven persons could be appointed to the Motor Workshop and thus there has been no discrimination against the applicants as alleged. The posting of juniors namely those who were appointed in 1987 and

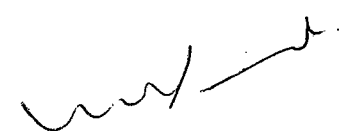
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in the case of Shiv Singh v. Union of India 1973(1)SLR 244 it has been held that optees should be repatriated to the division of their choice as early as possible whenever fresh vacancies occurred and even though they were not working in the division of their choice, they should be considered for working in the division of choice as and when vacancy occurred. The other judgment is in the case of State of Mysore vs. S.R.Jayaram, 1968 Lab. I.C.357 in which the portion of a rule reserving to Government the right of appointing to any particular cadre, any candidate whom it considers to be more suitable for such cadre, irrespective of the rank obtained and the choice given by the candidate, was held to be violative of article, 14 and 16 of the Constitution.

6. In view of the above, we hold that the applicants had to be given the shop of their choice after vacancies had arisen in that shop and there were no seniors waiting for absorption in the same shop. The application is accordingly allowed. The respondents are directed to forthwith post the applicants to the Motor Workshop with the benefits of the seniority, increments, etc. in accordance with law. No order as to costs.

  
(M.Y. PRIOLKAR)  
M(A)

  
(M.S. DESHPANDE)  
V.C.

(15)

subsequently to the Motor Workshop is justified on the ground that they were apprentices recruited under the Apprenticeship Act and that although these apprentices were entitled for absorption in the higher posts, they had given the willingness to be absorbed in the lower posts of Khalasis in the Motor Workshop.

4. We find it difficult to accept these contentions of the respondents. The reason for not accepting the option when the vacancy arose is that the applicants had no legal rights to that post but so is the case also with the apprentices. Admittedly, the apprentices had also no legal right to appointment to these posts. Once options have been obtained from the employees concerned, they are encouraged to believe that the options will be honoured depending upon their seniority and availability of the vacancies. It is, therefore, only to be expected that the applicants should have been accommodated in the shop of their choice atleast after vacancies had arisen in those shops subject to their seniors having also been accommodated. There is no evidence to suggest that the applicants and similarly placed other employees had been given to understand that their preferences would be valid only for three years and if there is no vacancy during this period, their juniors would be considered for posting in preference to them to the shops of their choice.

5. Learned counsel for the applicants, has also rightly relied on two judgments of the Supreme Court in this regard. In the first one,

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