

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

**BOMBAY BENCH**

O.A. No. 531/92

198

T.A. No. ---

DATE OF DECISION 10-8-1992

N.S.Pathare

Petitioner

Mr.L.M.Nerlekar

Advocate for the Petitioner(s)

**Versus**

The Divl.Railway Manager, CR. Bombay **Respondent**

Mr.J.G.Sawant

Advocate for the Respondent(s)

**CORAM :**

**The Hon'ble Mr. Justice S.K.Dhaon, Vice-Chairman**

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

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
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?

MGIPRRND-12 CAT/86-3-12-86-15,000

(M.Y.PRIOLKAR)  
M(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A.531/92

N.S.Pathare,  
R/o.405,Ashok Nagar,  
Waldhuni, Kalyan,  
Dist.Thane.

.. Applicant

vs.

Union of India  
through  
The Divisional Railway Manager,  
Central Railway,  
Bombay V.T.

.. Respondent

Coram: Hon'ble Shri Justice S.K.Dhaon,  
Vice-Chairman.

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

Appearances:

1. Mr.L.M.Nerlekar  
Advocate for the  
Applicant.
2. Mr.J.G.Sawant,  
Counsel for the  
Respondent.

ORAL JUDGMENT:  
(Per M.Y.Priolkar, Member(A) )

Date: 10-8-1992

The applicant, who was appointed on 10-10-1982 as a Khalasi in the Central Railway on casual basis, was promoted, again on casual basis, to work in the higher post of Driver on 19-2-1990. On 29-8-90, a notification was issued for screening of casual labourers/substitutes for absorption as regular Khalasis. The applicant, having been declared successful in the screening, was offered a regular post of Khalasi on 15.4.1992. The grievance of the applicant is that some of his juniors ~~in the Class IV category as Khalasis~~ have been retained to work in the higher post of Driver whereas the applicant though senior has been reverted to the regular class IV post. The applicant having refused to join the Class IV post

not  
has ~~allegedly~~ been given any work since 5th of  
May, 1992.

2. According to the respondents, after the order dtd. 15.4.92 was issued regularising the applicant in a Class IV post he had not reported <sup>to</sup> for work w.e.f. 5th May, 1992. The respondents have also stated that the higher posts of Drivers are in a purely temporary organisation and hence they cannot be made permanent, and it is therefore not possible to appoint any Drivers on a regular basis. The practice followed by the respondents is to initially appoint or promote persons to work on this post of Driver on purely casual basis and as and when such casual employees become due for regularisation, they are considered for absorption in Class IV posts in regular establishments. The learned counsel for the respondents, however, could not confirm whether any employee junior to the applicant has in fact been retained to work in the higher post, though casual, of driver while the applicant has been reverted to the regular class IV post.

3. We appreciate the difficulties of the respondents in appointing anyone to the post of Driver, which is in <sup>a</sup> purely temporary establishment on a regular basis. Still, we do not see any reason why the respondents should find it difficult to continue in the same capacity employees like the applicant who have already <sup>worked</sup> on casual basis in the driver's post for a long period even after their

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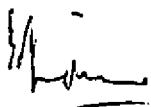
regularisation in the lower Class IV posts as Khalasis. Even after their regularisation, such employees could continue to work in the higher posts as long as a regular selection to those <sup>posts</sup> from among eligible employees has not been made. Learned counsel for the respondents explained that if a regular employee is appointed on casual basis to a higher post but a casual employee to the lower post on regular basis, it could create some administrative complications but he could not spell out any specific complication or any rules or instructions which prohibit such appointments. In our view, as long as a regular class IV employee holds a lien on a Khalasi's post, a casual employee appointed to that post because ~~the holder of~~ the holder of the post is promoted on a casual basis to a higher post, cannot have any right for regularisation in that post and as such, no administrative difficulty should come in the way of such arrangements. In any case, a casual worker who has worked on a post for a long period should have a better claim to continue in that post even after regularisation on a lower post, than his junior ~~who~~ who is yet to be regularised in the lower post or an outsider proposed to be directly recruited on a casual basis to the higher post. In this view of the matter, we allow the application in part and direct that the applicant may be continued <sup>To</sup> work on purely casual basis in the higher post of Driver until a regularly selected candidate is available or until the sanction exists for that post whichever is earlier.


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4. The learned counsel for the applicant stated that although the applicant had offered to continue to work in the higher post of Driver even after the offer of appointment to him on a regular Class IV post of Khalasi, he was not allowed to work in the post of driver from 5th May, 1992. Since he did not wish to work in the lower post of Khalasi, he claims salary for the period from 5th May, 1992 until he is <sup>again</sup> given the post of Driver. It may be noted that this application was filed by the applicant on 11-5-1992. A specific prayer for interim relief had been made in the application for continued retention in the higher post. However, his prayer for interim relief had not been granted by the Tribunal. The applicant could have accepted the offer of appointment under protest and he could have joined in the regular post of Khalasi. On the basis of the principle of "no pay for no work", we do not find any justification for awarding any monetary benefits to the applicant for the period he himself preferred not to work on the lower post. He would however be entitled to his seniority or any benefits for continuity of service even for this period. Learned counsel contended that his prayer for payment of salary during this period is based on discrimination against him which is violative of Articles 14 and 16 of the Constitution. We find, however, no merit in this contention since the applicant had not worked during this period. Learned counsel then prayed that atleast this period may be converted as leave to the extent admissible. This prayer seems to be reasonable. Accordingly, respondents

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are directed to adjust the period of absence of the applicant from 5th May, 1992 to the extent of leave due and admissible under the rules. With these directions the O.A. is disposed of. Let these directions be carried out within four weeks from the date of receipt of a copy of this order. M.P.Nos. 465/92 and 469/92 also stand disposed of.

  
(M.Y. PRIOLKAR)  
Member(A)

  
(S.K. DHAWON)  
Vice-Chairman

MD