

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 669/92

Date of Decision: 10/9/99

P.V.Kanangpule

.. Applicant

Shri G.S.Walia

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri D.S.Bawaja, Member (A)

The Hon'ble Shri S.L.Jain, Member (J)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?

D.S.BAWAJA
(D.S.BAWAJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 669.92

Dated this the 10th day of September 1999.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

1. Prasad Vikram Kanangpule
2. Milind Narayan Thakur
3. Ashok Hiralal Mistry
4. Ajay Mukund Patil
5. Sanjay M.Nadyekar
6. Ramchandra B. Rane
7. Vijay D. Sawant
8. Jagdish M.Mistry

... Applicants

All working as Khalasis in the
Car-Shed Bombay Central, Western
Railway, Bombay.

By Advocate Shri G.S.Walia

V/S.

1. Union of India through
General Manager,
Western Railway,
Churchgate, Bombay.
2. Divisional Railway Manager,
Western Railway, Bombay
Division, Bombay Central,
Bombay.
3. Sr.Divisional Electrical
Engineer (RS) Car-Shed,
Western Railway, Bombay
Central, Bombay.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

(Per : Shri D.S.Baweja, Member (A)

This application has been filed jointly by 8 applicants
who are working as Khalasis in the pay scale of Rs.750-940 in
Car-Shed, Mumbai Central, Western Railway. The applicants state
that they have undergone the training for a period of 3 years
under the Apprentice Act, 1961 in Mahalaxmi Workshop of Western



Railway and after successful completion of the training they have been awarded certificates. As per the applicants, though they ~~were~~ ^{to be} absorbed as Fitter in the pay scale of Rs.950-1500 after completion of training, but since the vacancies were not available, in the interest of administration they were absorbed as Khalasis in Group 'D' in Car-shed in Mumbai Central as per the order dated 20.3.1990. On 20.2.1991 the respondents notified selection for the post of Fitter. The applicants represented against the same stating that since they have already passed the test of Fitter on successful completion of training under the Apprentice Act and were appointed in Group 'D' as a temporary arrangement, they are entitled to be appointed as Fitter against the vacancies for which notification has been issued. In this representation, it was also pointed out that in respect of some other employees who were similarly situated and were absorbed initially in Group 'D' as a stop gap arrangement ~~have~~ been subsequently appointed as Fitters when the vacancies were available. The respondents, however, did not respond to this representation and went ahead with the conducting of the selection. The applicants had no option but to appear in the selection under compulsion. All the applicants appeared in the selection but they have ~~not been~~ declared passed. Feeling aggrieved by the same, the present OA. has been filed by the applicants on 1.7.1992.

2. The applicants contend that they ought to be absorbed on the post of Fitter without subjecting them to the fresh test since they had been declared fit to hold the post of Fitter on successful completion of training under the Apprentice Act, 1961. The action of the respondents in subjecting the applicants to fresh test is therefore illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. The applicants have also challenged the selection alleging that the same suffers viz. (a) from several infirmities. The applicants have stated that there was no Selection Committee nominated on the day when the written test was conducted. (b) Seniority marks have not been taken into consideration while declaring the candidates eligible to be called for interview based on the written test. (c) The applicants have been illegally failed in the written test and those who have been passed in the written test have not passed on the basis of their merits or seniority, and (d) In the written test candidates have been given extra marks by way of modification without the approval of the Selection Committee. In view of infirmities, these the selection held is illegal, arbitrary and has been solely conducted with a view to facour some of the persons.

3. Based on the above pleadings, the applicants have sought the following reliefs :- (a) to hold and declare that the applicants are entitled to be absorbed as Fitter without being subjected to test with all the consequential benefits as and when the vacancies arose. (b) to set aside the selection conducted for the post of Fitter.

4. The respondents have filed written statement opposing the OA. The respondents have strongly denied that the applicants pending were absorbed in Group 'D' ~~their appointment as Fitter against Respondents state that~~ the vacancies arising subsequently. ~~Once having been absorbed as Khalasi in Group 'D', the applicants cannot be appointed as Fitter unless they pass the test for promotion to the post of Fitter as per the Recruitment Rules.~~ The selection under reference was held to fill up the 25% quota and the applicants were allowed to appear in the selection as per the Railway Board's letter dated 24.2.1979. The applicants have not been found successful in the selection. The respondents, therefore, state that the applicants having appeared in the selection cannot now question the same on the ground that the action of the respondents in holding the selection is illegal. The respondents ~~in rules~~ further submit that there is no provision ~~to offer appointment in Group 'C' Skilled Artisan post viz. Fitter~~ to the Apprentices who have been trained under the Apprentice Act, 1961. The respondents further submit that the representation made by the applicants had been replied by the letter dated 8.4.1991 wherein it was advised that they can apply for skilled posts under ~~direct recruitment~~ 25% quota ear-marked for ~~as and when the administration notified the same for serving staff~~ or they can also apply for 25% rankers quota ~~if they fulfil the conditions stipulated in the Recruitment Rules.~~ The respondents submit that the selection committee was not appointed afterwards and ~~it was not necessary to take seniority for calling for viva voce marks into consideration as the post of Fitter for which the test was held was not a selection post, but was for 25%~~

quota ~~as~~ as a recruitment and not promotion in the normal channel. Based on these submissions, the respondents plead that there is no merit in the application and the same deserves to be dismissed.

5. The applicants have filed additional affidavit bringing out further facts in support of their claim of the reliefs prayed for. The applicants in the additional affidavit have brought out that they have been discriminated as similarly situated persons **initially** who were ~~not~~ absorbed as Khalasis were subsequently appointed as Fitter. The applicants have brought on record two such orders dated 12.11.1990 and 11.6.1990 to support their contention.

6. The respondents, however, have not filed any additional reply for this affidavit.

7. We have heard the arguments of Shri G.S.Walia, learned counsel for the applicants and Shri V.S.Masurkar, learned counsel for the respondents.

8. As stated earlier, the applicants have mainly sought ~~two~~ reliefs. The first relief is that the selection held for the post of Fitter in which the applicants were forced to appear be declared as illegal and not maintainable. The applicants have pointed out several irregularities and infirmities in conducting of the selection which according to them vitiate the selection.

The respondents have, however, denied all the allegations. On going through the OA., we find that though the applicants have mentioned about the selection having been ordered as per letter dated 20.2.1991, no other details have been brought on record. The applicants have stated in the OA. that this letter had been put on Notice Board and they have no **copy of the same.** From the averments, it is also gathered that the selection had been already completed at the time of filing of the OA. and the applicants had been declared unsuccessful in the selection. The applicants have neither impugned the result of the selection nor the employees who have been declared **in** the selection have been made as a party. In the absence of the details of the selection, not impugning of the selection result and **making** the candidates successful in the selection as a party, the matter cannot be gone into merits and pass any adverse orders. **Further** the grounds based on which the selection has been sought to be set aside are also very vague. The applicants have not indicated as to what basis **that** the selection committee was not nominated at the time of written test. The applicants have stated that seniority marks **were required** taken into consideration for determining eligibility to be called for viva voce test based on the written test in terms of the Railway Board's letter dated 5.12.1984. The respondents have denied this stating that the selection under process was against **recruitment for serving staff** the **25% quota** and the question of considering seniority marks as per the order dated 5.12.1984 did not arise. There is no **this** controversy of **statement** of the respondents. As regards the

selection of certain candidates and intention of failing of the applicants, the averments are very vague with no supporting material. None of the employees who are said to have been favoured have been made party. The applicants have also challenged the selection after having been unsuccessful in the same as rightly pointed out by the respondents. The applicants cannot turn around after having been unsuccessful in the selection when they had been aware of the rules under which the selection has been held. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Union of India & Anr. vs. M.Chandrashekaran & Ors., 1998 SCC (L&S) 916. Based on these observations, we are unable to find any merit in the relief of the applicants for setting aside the selection in which the applicants alleged to have been forced to appear for promotion as Fitter and have failed.

9. The second relief of the applicants is that they are entitled to be absorbed as Fitters without being subjected to a test. The applicants have argued that they were absorbed in Group 'D' as a temporary arrangement as the vacancies were not available in the Fitter's grade when they completed their training under the Apprentice Act and they were to be absorbed as Fitter as and when vacancies arose in future. The applicants have brought on record the letter dated 20.3.1990 based on which they were appointed as Khalasi in Group 'D'. The respondents have denied that the appointment as Khalasi was a stop gap arrangement pending their appointment as Fitter. We have gone through the

order dated 20.3.1990 and do not find any indication ~~of~~ their as Khalasi a appointment ~~had been~~ temporary arrangement pending absorption as Fitter. We are, therefore, unable to accept the contention of the applicants. Once the applicants have been absorbed as ~~on their acceptance of the appointment~~ Khalasis on regular basis ~~any~~ further promotion as per the Recruitment Rules has to be sought based on their seniority in Group 'D' and they cannot jump the queue and seek promotion over-looking the seniors and without being subjected to test as laid down for promotion to the post of Fitter. From the averments made in the OA., it is understood that the selection which is under reference was for the 25% Rankers quota meant for serving Group 'D' staff. The applicants could not be ~~appointed~~ without ~~selection~~ selection against this quota once having joined in Group 'D' ~~based on their~~ post ~~having passed the training under the Apprentice Act.~~ In view of these facts, we are unable to appreciate any merit in ~~this~~ claim of the applicants.

10. The applicants have filed additional affidavit as indicated earlier to bring ~~documents~~ on record ~~that~~ the applicants have been discriminated. The applicants have alleged that in respect of other employees who were similarly situated like the applicants and who were initially appointed as ~~Khalasis~~ were ~~appointed~~ as Fitter subsequently. The applicants have brought two such orders on record dated 12.1.1990 and 11.6.1992. We have gone through both the orders. From the order

dated 12.11.1990, it is noted that the recruitment was done in excess of the notified vacancies and those who were in excess had been absorbed in Group 'D' as a temporary arrangement till the vacancies ~~were~~ available for appointment as Fitter for which they ~~had~~ been selected. It is noted in this order that those who were in the waiting list have been absorbed against the future vacancies. We do not propose to go into whether such an action ^{However,} of the respondents is legally sustainable. The applicants cannot claim that they were similarly situated based on this order. In the case of applicants, there was no such stipulation in the order dated 20.3.1990 and therefore they cannot claim parity with those who were covered with the order dated 12.11.1990. In the second order dated 11.6.1992, again we find that there ~~was~~ a stipulation that pending the availability of ~~of fitters,~~ vacancies ~~those~~ who have been recruited in excess have been offered appointment as Khalasis in Group 'D' to be appointed subsequently as Fitter for which they had been recruited when the vacancies are available. Here ~~is~~ the same observation as made earlier in respect of the order dated 12.11.1990 also applies. With these facts, we are unable to find any merit in the contention of the applicants that they have been discriminated in not appointing as Fitter in the vacancies arising subsequent to their ~~appointment~~ in the Group 'D' as per ^{them} order dated 20.3.1990 without subjecting ~~to~~ any test.



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11. The learned counsel for the applicants cited the following applicants two judgements based on which they claim that they are entitled for appointment as Fitter without undergoing any selection : (a) Rakesh Ranjan Verma & Ors. vs. State of Bihar & Ors., 1992 SCC(L&S) 866 and (b) U.P. State of Road Transport Corporation & Anr. vs. U.P. Parivahan Nigam Shishukhs Berozgar Sangh & Ors., JT 1995 (2) S.C. 26. The applicants have cited the judgement in the case of U.P. State of Road Transport Corporation & Anr. stating that the Hon'ble Supreme Court has laid down the law that the trained apprentices are to be given preference and they are entitled to be appointed. The applicants have submitted that since they had completed the apprenticeship successfully, they were entitled to be absorbed as Fitter instead of as Group 'D'. We have gone through this judgement and are of the opinion that what is held in this judgement does not help the case of the applicants. The law laid down in this judgement would have been applicable to the case of the applicants if they had applied against the Direct Recruitment Quota. In the present case, the applicants had been appointed as Khalasis on their own choice. Once the applicants have joined the service in a particular cadre, the applicants cannot claim the benefit of this judgement for being appointed as rankers. Fitter against the quota meant for them. The applicants at the best can claim against the direct recruitment quota whenever the vacancies are notified by the respondents. We find that the respondents in the written statement as well as in reply to their representation dated 8.4.1991 have clearly stated that the applicants can apply against the 25% direct recruitment quota when

notified. It is not the case of the applicants that they have applied against the direct recruitment quota and the respondents have not considered their case. In such a situation, we are of the considered view that the law laid down by the Hon'ble Supreme Court in this judgement does not apply to the case of the applicants. In the second judgement of Rakesh Ranjan Verma & Ors., we note that the petitioners were recruited in 1989 in excess of notified vacancies and they could not be appointed as Junior Electrical Engineers (JEE). They were given alternative appointment to the lower post of Operators which was accepted by them furnishing an undertaking that they will not claim for the post of Junior Electrical Engineers against the subsequent vacancies. State Government however directed to absorb them as JEE against the vacancies arising in 1984-85. State Electricity Board did not act on this direction. Hon'ble Supreme Court has held that no right can be claimed by the appellants against any vacancies arising after the expiry of the panel. Hon'ble Supreme Court has further held that they are entitled to be considered for appointment against the future vacancies of Junior Electrical Engineers in accordance with the relevant rules. This will imply that those who have been absorbed in lower post could not be appointed directly as Junior Electrical Engineer against the future vacancies in violation of the rules. In the present case, situation is the same. The applicants are claiming to be appointed as Fitter after initial

appointment as Khalasis directly without undergoing the selection and over-looking the seniors in violation of the extant rules. As indicated earlier, the applicants can make a claim for appointment against the post of Fitter for direct recruitment quota as per the rules but cannot have any benefit of being appointed as Fitter from the Group 'D' posts directly against the vacancies of the promotional quota. As held by the Hon'ble Supreme Court, the applicants can be considered for fitter's post only as per the extant rules.

12. In the result of the above, we do not find any merit in the OA. and the same is dismissed accordingly. However, it is provided that the applicants may apply against the direct recruitment quota as and when notified and the applicants shall be considered as per rules. The applicants shall be allowed the age relaxation if required as per the extant rules. No order as to costs.

S.L.Jain

(S.L.JAIN)
MEMBER (J)

D.S.Bawej
(D.S.BAWEJA)
MEMBER (A)

mrj.