

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560 038.

Dated:-22 APR 1994

APPLICATION NUMBER:

601/93 and 655/93

APPLICANTS:

Nagaraja Chari & Another
To. vs. Secretary, Min. of Railways,
New Delhi & others.

- 1) Sri M.S. Anandasamu, Advocate
No. 27, Chandrashekhar Complex,
1 floor, 1 Main, Gandhi Nagar, Bangalore-9.
- 2) The Divisional Personnel Officer,
Southern Railway,
Divisional Office, Mysore.
- 3) Smt. M.V. Nirwala, Advocate
53, N.S. Iyenger Street
Seshadripuram, Bangalore. 560 020.

Subject:- Forwarding of copies of the Orders passed by the
Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/, passed by this Tribunal in the above
mentioned application(s) on 12th April 1994

Issued on

22/4/94

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S. Rauhar 22/4
for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

ORIGINAL APPLICATIONS NO.601/93 AND 655/93

TUESDAY, THE TWELVTH DAY OF APRIL, 1994

Shri V.Ramakrishnan, Member (A)

Shri A.N.Vujjanaradhya, Member (J)

1. Nagaraja Chari,
S/o Rajachari,
Aged about 48 years,
Working as Revitter,
(highly skilled Grade-II),
Office of the Bridge Inspector,
Southern Railway, Mysore.

...Applicant
in O.A.601/93

2. Thangappan Nair,
S/o Shankaran Nair,
Aged about 47 years,
Working as Revitter,
(Highly skilled Grade-II),
Office of the Bridge Inspector,
Southern Railway, Mysore.

...Applicant
in O.A.655/93

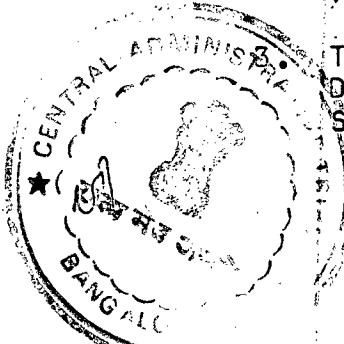
By Advocate Shri M.S.Anandaramu

Versus

1. The Union of India,
rep. by its Secretary,
Ministry of Railways,
Rail Bhavan,
New Delhi.

2. The General Manager,
Southern Railway,
Park Town, Madras.

The Divisional Railway Manager,
Divisional Office,
Southern Railway, Mysore.



4. The Divisional Personnel Officer, Southern Railway, Divisional Office, Mysore.
5. Rama, major, working as Revitter, High Skilled Grade-I, Office of the Bridge Inspector, Southern Railway, Mysore.
6. C.Nagaraju, major, working as Revitter, High Skilled Grade-I, Office of the Bridge Inspector, Southern Railway, Mysore.
7. C.Mehaboob Khan, major, Working as Revitter, High Skilled Grade-II, Office of the Bridge Inspector, Southern Railway, Mysore.

....Respondents

By Advocate Smt. M.V.Nirmala, C.G.S.C.

O R D E R

Shri V.Ramakrishnan, Member (A)

The applicants joined service as Khalisis in the office of the Permanent Way Inspector in Southern Railway Divisional Office, Mysore. The first applicant joined on 18.9.1969 and the second applicant on 15.4.1971. They are aggrieved by the seniority list published by the railways as per Annexure 'E' which shows them as junior to R5, R6 and R7, namely S/Shri Rama, Nagaraja and Mehaboobkhan. They have moved the Tribunal for quashing the seniority list which shows them as junior to R5 to R7.

2. Briefly stated the facts of the case are as follows:- The applicants joined service in the establishment of PWI and at their own request, they got transferred to BRI establishment during August, 1980. When they were transferred to BRI, they were in fact holding the post of

Gangman in PWI establishment, but volunteered to get transferred to BRI establishment to a lower cadre of Khalasis. We see from the office order No.75 dated 18.8.1980 that it was done as per their willingness and it was made clear to them in that order that their seniority vis-a-vis other temporary khalasis in BRI, Mysore will be as per their panel position. In the seniority list published on 28.6.1993 as at Annexure 'E' they are shown as juniors to R5, R6 and R7.

3. We have heard Shri M.S.Anandaramu for the applicant and Smt. M.V.Nirmala for the respondents.

4. The main ground advanced by the applicants' counsel for getting their seniority fixed above R5 to 7, is that the applicants joined at the level of khalasi earlier to R6 & R7. As regards R5, Shri Rama, it is admitted by the applicants that R5 joined service as khalasi on the same date as first applicant and much earlier to the appointment of the 2nd applicant. During the hearing, the applicants now confine their claim of seniority over only R6 and R7. Shri Anandaramu concedes that the applicants have no claim for getting seniority over R5 but they should be ranked senior to R6 & R7, who joined as khalasi in January, 1975 and February, 1975 respectively i.e. much after the applicants' recruitment to the level of Khalasi in PWI establishment. The respondents Railways contest the claim and state that the applicants have moved over from the establishment of PWI to that of Bridge Inspector in August, 1980. The date of their appointment as khalasi in PWI establishment is no longer relevant, when the

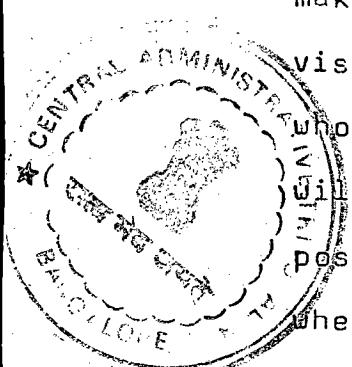


applicants volunteered to move to a different seniority unit at their own request and they have agreed to take the bottom seniority in the new establishment. They also draw our attention to rule 226 of Indian Railway Establishment Code and also Rule 312 of Indian Railway Establishment Manual, where it is stated that the seniority of railway servants transferred at their own request from one cadre/division to another cadre/division should be allotted below that of the existing railway servants in the relevant grade in the cadre/division to which they are transferred. They refer to pages 18 and 19 of the Indian Railway Establishment Manual Vol.I revised edition 1989, where it is clearly shown that the PWI establishment is different from that of BRI establishment.

5. We have gone through the service registers of the applicants as also R5 to R7. It is clear from the service registers that they were transferred to the BRI establishment on 22.8.1980 and that they moved over as regular khalasis. In view of rule 226 of the Railway Establishment Code read with rule 312 of the Indian Railway Establishment Manual and as PWI is an establishment separate from BRI, the applicants' seniority will be allotted below that of the railway servants already in the relevant grade in the BRI unit on 22.8.1980. It is further seen that the applicants also had accepted this position when they wanted to move from PWI to BRI establishment. The question that now remains to be considered is, as to whether R6 & 7 were empanneled for appointment as khalasi from a date prior to August, 1980 when the applicants moved over to BRI establishment as Khalasis.

6. We find from the service registers of Shri Nagaraja (R6) as also Shri Mehaboobkhan (R7) that they were stated to have been empaneled for appointment as temporary khalasis on 31.12.1979 by letter dated 26.9.80/7.10.80. We have perused the Memo No. Y/P 564/VII/E/MYS/79 dated 26.9.1980 (taken on record), which deals with empanelment of casual labourers. We find from the same that Shri Nagaraja was shown as at Sl.No.4 and Shri Mehaboobkhan as at Sl.No.8 in that list. This panel was approved on 28.9.1980. To ^{the} query as to ~~for~~ which date the panel takes effect, the railways have drawn our attention to rule 38 of the Rule regarding Recruitment and Other Service Conditions of Casual Labourers and Substitutes. This rule inter-alia mentions that after the Constitution of screening committee and completion of screening, the empaneled list is to be drawn up and put up to the competent authority for approval. The counsel for Railways conceded that the panel takes effect from the date it is approved and not from any retrospective date.

7. The position which now emerges is that the applicants joined as regular khalasis in the BRI establishment in August, 1980, whereas R6 and R7 were empaneled as regular khalasis in the establishment with effect from 26.9.1980. The office order No.75 dated 18.8.80 also makes it clear that the seniority of the applicants vis-a-vis other temporary khalasis, who are working or who may be appointed later due to administrative reasons will be as per their panel position. As the applicants' position as khalasis should be taken from August, 1980 whereas the panel position of R6 & R7 took effect only



only on 26.9.1980, the applicants should rank as senior to R6 & R7 in terms of the relevant rules and instructions of the Railways. The entry in the service register in respect of S/Shri Nagaraja and Mehaboobkhan that they were empaneled for appointment of temporary khalasis as on 31.12.1979 is factually incorrect, as the panel was approved only on 26.9.1980. So far as R5 Shri Rama is concerned, it is not in dispute that he was empaneled as khalasi in the BRI establishment on 30.1.1980 prior to the induction of the applicants in BRI establishment. As such, the applicants have no claim to rank over R5.

8. In the light of foregoing, the applicants should be shown as senior to R6 & 7 namely S/Shri Nagaraja and Mehaboobkhan in the seniority list dated 28.6.93 as at Annexure 'E'. The railways should re-fix the seniority of the applicants as stated above showing them as seniors to Sh/Shri Nagaraja and Mehaboobkhan in the seniority list referred to above through necessary ~~modification in~~ ^{modification in} notification. The applicants will also be entitled to consequential benefits ~~for consideration for promotion to a higher level.~~ ^{for consideration for promotion to a higher level.} We find from Annexure-F dated 16.6.93 that Shri Nagaraja, who now becomes junior to the applicants, has been promoted to the higher grade Revitter HS-I in the BRI establishment. The Railways should now consider the applicants for promotion to the higher grade and if they are found fit, and subject to availability of vacancies after reverting Shri Nagaraja, if necessary, effect necessary promotion to the applicants. The Railways should complete the exercise within three months from the date of receipt of a copy of this order.

8. The applications are finally disposed of as above with no orders as to cost.

Sd/-

(A. N. VUJJANARADHYA)
MEMBER (J)



Sd/-

(V. RAMAKRISHNAN)
MEMBER (A)

TRUE COPY

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