

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 295 OF 1993.

5.3.99

Date of Decision:

S. S. Tunge & 5 Others, ————— Applicants

Shri G. S. Walia, ————— Advocate for
Applicants

Versus

Union Of India & Others, ————— Respondent(s)

Shri R. R. Shetty, ————— Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R. G. Vaidyanatha, Vice-Chairman.

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

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

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

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

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 295 OF 1993.

Dated the 5th day of March, 1999.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

1. S. S. Tunge.
2. B. S. Tiwari.
3. Ramesh Menon.
4. D. S. Kengle.
5. S. S. Bhosle.
6. V. M. Shewale

... Applicants

All working as Artisan Khalasi
in Blacksmith Shop, Parel Workshop,
Central Railway, Bombay - 400 012.

(By Advocate Shri G. S. Walia)

VERSUS

1. Union Of India through
The General Manager,
Central Railway,
Bombay V.T.,
Bombay - 400 001.
2. Chief Workshop Manager,
Central Railway Workshops,
Central Railway, Parel,
Bombay - 400 012.
3. Dinanath Singh.
4. Tukaram Mahadik.
5. S. Maharajan.
6. Mani Pillai.
7. Madhusudan Nair.
8. Dasarath Khawre.

... Respondents.

(Respondent No. 3 to 8 working as
Khalasis, Blacksmith Shop,
Central Railway, Parel,
Bombay - 400 012.)

(By Advocate Shri R. R. Shetty).

ORDER

(PER.: SHRI D. S. BAWEJA, MEMBER (A))

This application has been filed jointly by six applicants who were working as Artisan Khalasis in the Blacksmith Shop of Parel Workshop, Central Railway, Bombay. The applicants were appointed as Artisan Khalasis through direct recruitment on various dates as under :

i.	S. S. Tunge	...	01.06.1989.
ii.	B. S. Tiwari	...	05.08.1989.
iii.	Ramesh Menon	...	05.08.1989.
iv.	D. S. Kengle	...	23.09.1989.
v.	S. S. Bhosle	...	31.12.1990.
vi.	V. M. Shewale	...	12.12.1991.

The applicants submit that six canteen vendors who were working in the Canteen of Parel Workshop, have been transferred as Artisan Khalasis to the workshop cadre on the technical side in the Smith Shop subsequent to the appointment of the applicants and have been allowed seniority from the date of appointment. The six employees have been made as Respondent Nos. 3 to 8 in the O.A. and the applicants have furnished their particulars of initial appointment and entry into the Smith Shop as follows :

Name of the Employee.	Respondent No.	Date of Appointment.	Smithshop Entry Dt.
Dinanath Singh	3	22.10.1980	23.03.1991
Tukaram Mahadik	4	22.10.1980	23.03.1991
S. Maharajan	5	01.02.1978	13.11.1991
Mani Pillay	6	26.04.1978	13.11.1991
Madhusudan Nair	7	26.05.1983	15.01.1992
Dasharath Khawre	8	08.05.1982	07.03.1992

The applicants further state that the respondent Nos. 3 to 8 by virtue of being allocated seniority from the dates of appointment in the canteen, have become senior to the applicants and are being considered for the next promotion in the Group 'C' category as Skilled Artisan Grade-III in preference over the applicants. The applicants made a representation against the same as per their letter dated 12.02.1993 referring to the order dated 27.05.1992 of the Railway Board which has laid down instructions with regard to the seniority of Canteen Staff. However, they did not get any response to this letter and feeling aggrieved, the present O.A. has been filed on 02.04.1993 seeking the following reliefs :

- (a) To hold and declare that the induction and transfer of the Respondent Nos. 3 to 8 as Artisan Khallasis is bad in law and therefore illegal and ineffective.
- (b) To hold and declare that the applicants are entitled to be considered for the post of Artisan Skilled Grade-III in preference over the Respondent Nos. 3 to 8

2. The applicants have challenged the induction of Respondent Nos. 3 to 8 into the workshop cadre in the Smith Shop on the following grounds :-

- (a) The Respondent Nos. 3 to 8 who were working in the Canteen in the Parel Workshop have no right to be granted seniority as there is no channel of promotion for them to be absorbed as Artisan Khallasi in the workshop on

technical side and, therefore, their induction is against the extant rules.

(b) The decision to transfer Respondent Nos. 3 to 8 to Workshop cadre has been taken by the Deputy CME(D), who is not a competent authority. Such a policy decision could be taken by the Railway Board and General Manager in terms of para 123 and 124 of the Indian Railway Establishment Code. Volume-I.

(c) As per Headquarters letter dated 30.01.1985, a Khallasi must have completed a minimum of 750 effective working days of duty or three years of service before he becomes eligible for promotion to semi-skilled category. In the case of Respondent Nos. 3 to 8, these stipulations are not complied with and, therefore, the Respondents No. 3 to 8 are not entitled for consideration for promotion to the post of Artisan Gr.III.

(d) The transfer of Respondent Nos. 3 to 8 is not in the interest of administration and their transfer in the workshop cadre has been treated as in the interest of only administration, with a view to cover up the illegal action of the respondents and to give undue benefit to Respondent Nos. 3 to 8.

3. The respondents have contested the application through their written statement. The respondents submit that after the judgement of the Hon'ble Supreme Court dated 27.02.1990 in the case of M. M. Khan, the Canteen employees were treated as Railway employees and as such, entitled to service conditions and benefits of a railway employee. In this connection, the Railway Board issued orders dated 18.05.1990 and Headquarters issued some clarifications as per letter dated 15.06.1990. With reference to the instructions laid down in these Railway Board and Headquarters letters, a joint meeting was held with the two recognized Unions at the Unit Level on 16.11.1990 wherein it was decided that in the interest of administration, all canteen vendors who had completed more than 7 years on 31.03.1990 in the Canteen shall be transferred to Workshop. In terms of this decision in the joint meeting, the Respondent No. 3 to 8 were transferred to various shops as Khalasis in the grade of Rs. 750-950, after obtaining prior approval of Deputy CME (D), who is the competent authority as per the Schedule Of Powers (Establishment). In view of the transfer being made in the interest of administration, the Canteen Vendors, on transfer have been allowed seniority on the basis of their regular appointment in the service in the Canteen. In view of this, the respondents contend that the action taken is as per the extant rules and challenging of this action and calling it illegal in terms of para 123 and 124 of the Indian Railway Establishment Manual, Volume-I, is misconceived. The respondents further state that based on the seniority as allowed to Respondent No. 3 to 8, they have been promoted as Artisan Skilled Grade-III after passing the trade test as per the extant rules. As regards

compliance of the conditions laid down for promotion to semi-skilled and Skilled Grade in the order dated 31.01.1985, the respondents state that this letter refers to ^{other} categories of staff including Safaiwallas and Helpers and does not apply to the category of Khalasis. The respondents, therefore, pray that the applicants are not entitled for the reliefs ^{prayed for} and the O.A. deserves to be dismissed.

4. The applicant has filed rejoinder-reply rebutting the contentions of the respondents. The applicants have maintained the grounds advanced in the original application.

5. Notices were issued to Respondent Nos. 3 to 8 but they have neither appeared in person nor have been represented through a counsel. No written statement has also been filed by them.

6. As per Tribunal's Order dated 06.04.1993 it was provided that promotions if any, to the skilled Grade-III will be subject to the outcome of this O.A.

7. Before going ^{into} the merits of the issue raised in this O.A., we cannot help but to observe that the respondents though in the written statement have referred to number of letters to support their averments but none of these documents have been brought on record. Infact, even during the hearing, the Learned Counsel for the respondents could not produce any of the documents referred to. Once certain documents have been relied upon in support of the averments, it is incumbent on the part of the respondents

to bring such documents on record. In the absence of such documents, it becomes difficult to go into the merits of the case. In the present case, we are going to the merits of the case without the benefit of the documents referred to in the written statement. However, we expect that these observations shall be taken note of by the respondents and assure that in future the documents referred to in the written statement are brought on record.

8. From the facts brought on record by the either party, it is noted that Respondent Nos. 3 to 8 who were working as Canteen Vendors, belonged to a separate seniority group in the Canteen and have been transferred to the workshop cadre constituting a separate seniority unit. The respondents have contended that the transfer of Respondent Nos. 3 to 8 and allowing them the seniority from the date of initial appointment in the canteen, has been done in the interest of administration. In view of this, the short question which requires to be gone into is, whether the action of the respondents was in the interest of administration in the face of grounds advanced by the applicants in challenging these transfers in the present O.A.?

9. The first ground of challenge is that transfer of the respondent Nos. 3 to 8 has been ordered by Deputy CME (D) who is not the competent authority. It is further contended that as per Rule 123 and 124 of Indian Railway Establishment Code, Volume-I, Railway Board and the General Manager are the competent authorities.

10. The respondents have however contested this above and have stated that as per the "Schedule Of Powers Establishment" Item No. 9, a Junior Administrative Grade Officer is competent to order transfer and promotion in respect of non-gazetted staff from Group 'D' to Group 'C' as well as transfer within Group 'D' cadre. The transfer has been effected with the approval of Deputy C.M.E (D) PR, who was therefore the competent authority as per the Schedule of Powers.

It is further stated that the Headquarters' post-facto sanction has also been obtained subsequently. As indicated earlier, the respondents have not brought on record any of the documents referred to. However, from the averments of the respondents it is obvious that the decision initially taken at the workshop level for transfer of canteen staff was not within the competence of Deputy C.M.E(D) P.R. / it is stated that subsequently the Headquarter instructed that any action taken at the workshop level with regard to change in avenue of promotion, etc. required prior approval of the Headquarters. It is also stated that as per letter dated 26.04.1993 reference was made to the Headquarters for post-facto sanction and as per the Headquarters' letter dated 26.07.1993 the post-facto sanction has been granted. Since these letters are not on record, we are not able to find out as to the basis on which the said post-facto sanction has been granted by the Headquarters and by which authority. Based on the averments made in the written statement, we are compelled to come to the conclusion that the transfer of Respondent Nos. 3 to 8 to the Workshop cadre was not done with the approval of the competent authority.

11. The second ground of challenge and which is the main ground is that the transfer of Respondent Nos. 3 to 8 has been done/in the interest of administration and the decision to transfer has been motivated with a view to give undue benefits to Respondent Nos. 3 to 8. The respondents while contesting this ground of the applicants have stated that administration had no interest to transfer the respondent nos. 3 to 8 and it

was only after the receipt of Railway Board's order, meeting was held with the recognized unions and approval of the competent authority was taken to transfer Respondent Nos. 3 to 8. The respondents have further explained that subsequent to the judgement of the Hon'ble Supreme Court in the case of M.M. Khan, all the Canteen employees were deemed to be railway servants from 22.10.1980, as advised through Railway Board's order dated 18.05.1990. It is further stated that this order of the Railway Board was clarified by the Headquarters as, per letter dated 25.06.1990. It is further ^{submitted} that on receipt of these two orders i.e. dated 18.05.1990 and 25.06.1990, a joint meeting was held with the two recognized unions and the matters pertaining to recruitment, educational qualifications, training, medical examination and avenue of promotion was discussed and it was decided that in the interest of administration, all Canteen Vendors who had completed more than 7 years as on 31.03.1990 in the Canteen should be transferred to Workshop. The respondents have not brought on record the letters dated 18.05.1990 and 25.06.1990, which authorised the Workshop Unit to take a decision for transferring the Canteen staff into the Workshop Unit. Infact, the applicants have brought on record a copy of the letter dated 27.05.1992 through which the Railway Board has laid down the re-organisation of the cadre of the Canteen in reference to the instructions issued by the Railway Board as per order dated 18.05.1990 subsequent to the judgement of the Hon'ble Supreme Court in the case of M.M. Khan dated 27.02.1990. This letter lays down that the Canteen cadre is to be grouped into 4 groups and merger of various

posts should be done in the same grade to reduce the number of categories of staff. This letter does not envisage any transfer or induction of staff to the workshop cadre. In view of this, we fail to understand as to how the letter dated 18.05.1990 of the Railway Board had authorised the Workshop Unit to undertake the exercise of transferring of the canteen staffs to the Workshop Unit in the interest of administration and giving them seniority from the date of their appointment in the Canteen. From the averments made in the written statement, it appears that the decision to transfer the Respondent Nos. 3 to 8 was a one-time exercise with a view to transfer a particular group of Canteen staff. The Learned Counsel for the respondents produced a letter dated 06.04.1983 of the Railway Board in support of their stand. On going through this letter, it is noted that statutory canteen staff was treated as Railway Servants from 22.10.1980. This letter gives clarifications on some issues raised by the Railways for implementing the scheme. Item 9 refers to avenue of promotions and yardstick of posts and we fail to appreciate how the clarifications given by the Railway Board covers the action of ^{Respondent} Workshop. It is nowhere averred that this decision was taken as a policy decision to be followed regularly for laying down the avenue of promotion. In fact, it has been brought out that on a reference made to the Headquarters, it is advised that the policy with regard to the channel of promotion, etc. was still under discussions at the headquarters level. In these circumstances, we are unable to accept the plea of the respondents that the transfer of Respondent Nos. 3 to 8 was done in the interest of administration. Mere labelling the executive decision as "in the interest of administration", cannot cover an

irregular action not permitted by extant rules. As brought out earlier, the respondents have failed to bring on record the minutes of the meeting and the post-facto sanction of the competent authority, which would have shown as to the administrative interest in the transfer of Respondents Nos. 3 to 8. During the arguments when a question was put to the Counsel for the Respondents to indicate the basis of "interest of administration", he made only a feeble submission that the transfer of Respondent Nos. 3 to 8 to the Workshop Cadre was done with a view to create vacancies in the Canteen for providing compassionate appointment, for which the candidates were waiting. This reason for treating the transfer as "in the interest of administration", does not impress us. If the question was that of the availability of vacancies for the candidates who were waiting for compassionate appointment, they could have been appointed in the workshop directly instead of the Canteen. The Counsel for the respondents could not explain as to whether ^{there} was any ban in making compassionate appointment directly in the Workshop. Keeping in view the facts as emerging, we are not inclined to accept the submission of the respondents that the transfer of Respondent Nos. 3 to 8 was actuated by the interest of administration and in terms of the Railway Board's letter dated 16.05.1990. In view of this, we are persuaded to hold that the transfer of Canteen staff alongwith their seniority from the date of initial appointment in the Canteen cannot be sustained and deserves to be set aside.

12. The applicants have taken one more ground that in terms of the Circular dated 31.01.1985, Group 'D' staff could be promoted to skilled category only if they have worked effectively for 750 working days or on completion of 3 years of service, whichever is more and

in the case of Respondent Nos. 3 to 8, these conditions have not been complied with, as they have been given promotion in the Skilled category immediately after absorption. The respondents have contested this by stating that this circular does not apply to the case of Respondent Nos. 3 to 8, as the circular covers the promotion of certain common categories such as Safaiwalls, Helpers, etc. to Skilled Artisans, etc. After going through the letter dated 31.01.1985, we are not able to accept the explanation of the respondents. The circular applies to the Helpers of the Skilled Artisans and obviously, the Helpers to the Skilled Artisans would be Khalasis, who became due for promotion to Skilled Artisans as per the channel of promotion. In our opinion, it will apply to the case of the applicants. Respondent Nos. 3 to 8 could not be promoted immediately after transfer to the Workshop. However, we are not inclined to set aside their promotion as Skilled grade-III at this stage but their seniority will ^{due} ~~not~~ be reckoned from the date of promotion.

13. During the hearing, on a query made, the Counsel for the applicants confirmed that the applicants have also since got promotion to the Skilled Grade-III.

14. As recorded earlier, we find that the transfer of Respondent Nos. 3 to 8 is not in the interest of administration and they cannot be allowed seniority from the date of their appointment in the Canteen. If the Respondent Nos. 3 to 8 are willing for change in the cadre with seniority from the date of transfer, they can be continued in the cadre of the Workshop. However, if they are not willing to continue

with seniority only from the date of transfer, then respondent nos. 3 to 8 are entitled to give an option for going back to the parent cadre in the Canteen.

15. From the particulars of the applicants and that of the Respondent Nos. 3 to 8 furnished in the O.A., it is noted that Respondent Nos. 3 to 6 have been transferred to the Workshop earlier than Applicant No. 6, while Respondent Nos. 7 and 8 have been transferred subsequent to Applicant No. 6. In view of this, the relative seniority of the applicants and Respondent Nos. 3 to 8, in case they opt to continue in the workshop cadre, will be regulated ~~keeping~~ ^{need to} these details in view.

16. In the light of the above discussions, the O.A. is allowed with the following directions :-

(i) The transfer of Respondent Nos. 3 to 8 while working as Canteen Vendor to the Workshop Cadre alongwith their seniority from the date of initial appointment in the Canteen is set aside. The transfer of Respondent Nos. 3 to 8 will be treated as a request transfer and they will be allowed seniority from the date of appointment in the Workshop Cadre.

(ii) Since both the applicants as well as the Respondent Nos. 3 to 8 have been already promoted to the post of Skilled Grade-III, the Respondent Nos. 3 to 8 will be allowed seniority in the

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Skilled Grade-III below the applicants, based on the date of joining and the observations made above in respect of Applicant No. 6. However, no recovery of any will be made from the Respondent Nos. 3 to 8.

(iii) Respondent Nos. 3 to 8 will have option to go back to Canteen cadre if they are not willing to remain in the Workshop cadre with seniority from the date of transfer, as observed in para 14 above.

(iv) No order as to costs.

D.S. Baweja
(D.S. BAWEJA)

MEMBER (A).

R.G. Vaidyanatha
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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