

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 890 OF 1993

THURSDAY, THE 26TH DAY OF APRIL, 2001

SHRI KULDEEP SISNGH.
SMT. SHANTA SHASTRY.

... MEMBER (J)
... MEMBER (A)

1. Mr. Indrabahadur B. Yadav,
T. No.321.
2. Mr. Ramachandra K. Yadav.
3. Mr. Macchhanchu I.
4. Mr. Balram S. Gupta, t.No.95.
5. Mr. Amritlal Yadav.

... Applicants

All Khallasi working under Chief Electrical Engineer
(EMU), Mahalaxmi, Bombay-400 013.


By Advocate Shri C.M. Jha.

Vs.

1. Union of India through its
General Manager, Western Railway,
Churchgate,
Bombay 400 020.
2. the Divisional railway Manabger,
Western Railway,
Divisional Railway manager Office,
Bombay Central,
Bombay-400 008.
3. The Chief Works Manager,
(EMU), Western Railway
Workshop, Mahalaxmi,
Bombay-400 013.
4. Mr. Try John Khalasi,
Western Railway Workshop,
Mahalaxmi, Bombay-400 013.

... Respondents

By Counsel Shri A.L. Kastury.



O R D E R

Smt. Shanta Shastri.

... Member (A)

Aggrieved by the seniority list dated 14.7.1993 issued by the Western Railway, the applicants have approached this Tribunal to quash and set aside the aforesaid seniority list and to direct the respondents to recast the seniority keeping in view the length of service of the applicants and date of screening,

2. The applicants are working as Khalasis under the Chief Works Manager, Western Railway Workshop Mahalaxmi in the pay scale of Rs. 750-940 (RP). They were initially engaged as casual labours in 1982 except for the applicant No.5, who was engaged on 20.11.87. The applicants were working continuously since joining without break. Instructions have been issued by the Railway Board to absorb the casual labours as per rules. However, inspite of these instructions, the applicants could not be regularised earlier. They were finally regularised and absorbed vide letter dated 18.2.1993. Due to this they were brought down in the seniority and as per the list issued on 14.7.1992 they have been shown at S.No. 221, 223, 225, 230 and 246.

3. It is the contention of the applicants that though their continuous service from 1982 and 1987 should have been taken into consideration for absorbing them, the respondents have gone by the date of regularisation of the applicants and have placed them almost at the bottom of the seniority list of khalasis. The applicants state that they have represented to the respondents from time to time to consider them for absorbing in the light of the instructions issued by the Railway Board.

However, the respondents failed to follow the instructions issued by the Railway Board. Without absorbing the applicants, contrary to the instructions of the Board, some new faces were recruited from the open market. The action of the respondents is against para 2006 of the IRAM. It is, further submitted that the applicants' case is covered by the Supreme Court judgement in Inderpal yadav and others Vs. Union of India (1985 (2) SCC 648) wherein the Supreme Court held that absorption should be in the order of length of continuous service.

4. Applicants allege that the seniority list has been prepared without application of mind. Further the respondents held screening for absorption on 1.9.90. Even after that they took 2 1/2 years to give actual regularisation to the applicants. The applicants had earlier ^{prayed to} for interim relief by way of restraining the respondents from processing the restructuring of Group "C" and "D" staff as per Board's letter dated 17.1.1993. However, no interim relief was granted.

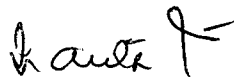
The Respondents submit that
5. A screening committee consisting of three officers of the respondents screened the applicants on 1.9.90 and the panel was provisionally approved by the competent authority on 4.9.90 with the following remarks:- "provisionally approved. Panel should be issued only after getting approval from Headquarters regarding their initial engagement as casual labours to those appointed after 14.7.1981 for which a reference has already been sent to Headquarters". In view of this the matter was taken up with the competent authority i.e. the General Manager for ex post facto sanction for regularising the initial engagement of the casual labourers engaged after 14.7.1981. Finally the

sanction came from General Manager only on 17.7.92 and thereafter the applicants were regularised from 18.2.1993. The respondents have, therefore, followed the proper procedure and rightly regularised the applicants from 18.2.1993.

6. We have heard the learned counsel for both sides. the entire grievance has arisen out of the delayed regularisation of the applicants. Although, according to the applicants, they should have been regularised much earlier the screening was held only on 1.9.90. What is hurting the applicants is that even after screening held in 1990 the result of the screening was not declared and finally the applicants were absorbed on 18.2.1993 thus there has been a delay of almost 2 1/2 years. In fact according to them the delay is more than 10 years as their continuous service from 1982 was not considered by the respondents. We cannot now go into the delay that occurred prior to 1990 unless the applicants were screened, they could not be regularised. They were screened on 1.9.90. We find that the delay in absorbing the applicants has occurred because of a reference made to the General Manager for his post-facto approval for the initial engagement of the applicants. As already referred to above, even as on 4.9.90 a reference seems to have been made to the competent authority for according the post-facto sanction. It is, therefore, difficult to accept that it should have taken 2 years for the General manager to issue post-facto sanction and a further period of 7 months thereafter to grant regularisation to the applicants. In our considered view this delay could certainly have been avoided, if the respondents had acted in time. Since the General Manager gave

the ex post facto sanction to the initial engagement of the applicants, the applicants are entitled to be regularised from the date of screening i.e. 1.9.90 and accordingly their seniority also will have to be recast. We, therefore, quash and set aside the impugned seniority list of 14.7.1993 and direct the respondents to recast the seniority of the applicants for granting them regularisation with effect from 1.9.90. The applicants shall also be entitled to the consequential benefits thereafter.

6. In the result, the OA is allowed. We do not order any costs.



(SHANTA SHASTRY)
MEMBER (A)



(KULDEEP SINGH)
MEMBER (J)

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