

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.83/2015

Date of Decision: 01.05.2019.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

1. Madhukar Sukdev Sangale
Son of Sukdeo Bhaguji Sangale,
date of birth: 12.08.1976, age: 38 years,
working as Khalasi (Group D) post, under
Traction Machine Workshop, Central Railway,
Traction Machine Workshop, Nasik Road,
Nasik and residing at: RB-1/108/C, Traction
Railway Colony, Nasik Road, Nasik 422 101,
State of Maharashtra.
2. Kailas Damu Pagare
Son of Damu Dhondiram Pagare,
date of birth: 01.06.1963, Age : 52 years,
working as Khalasi (Group D) post, under
CWM, Traction Machine Workshop, Central
Railway, Eklahara Road Station, Nasik Road,
Nasik. R/at RB-II-210-B, Traction Machine
Workshop Colony, Eklahara Road, Nasik Road,
Nasik 422 101, State of Maharashtra.
3. Raosaheb Rambhau Wakchaure,
Son of Rambhau Bhauro Wakchaure,
date of birth : 01.09.1972, age : 42 years,
working as : Khalasi (Group "D") post,
under Traction Machine Workshop,
Central Railway, Eklahara Road Station, Nasik Road,
Nasik, and residing at : Shilpurindavan HSC, B-07,
Near Shri Hari Lawans, Dasak, Jail Road,
Nashik Road, Nashik, Nasik 422 101,
State of Maharashtra.
4. Pandurang Ganpat Kapadi
Son of Ganpat Thagaji Kapadi
date of birth : 01.09.1976, age : 39 years,
working as : Khalasi (Group "D") post,
under CWM, Traction Machine Workshop,
Central Railway, Eklahara Road Station,
Nasik Road, Nasik 422 101,

State of Maharashtra.

5. Kailas Sukhadav Avhad
Son of Sukhadev Devaram Avhad,
date of birth : 08.01.1975, age : 40 years,
working as : Khalasi (Group "D" post),
under CWM, Traction Machine Workshop,
Central Railway, Eklahara Road Station.
Nasik Road, Nasik and residing at : Room No.11,
Vasand deep, Nasik 422 101,
State of Maharashtra.
6. Sunder Ragunath Jadhav
son of Raghunath Ramchandra Jadhav,
date of birth : 01.06.1966, age : 49 years,
working as : Khalasi (Group "D") post,
under TMW, Traction Machine Workshop,
Central Railway, Nasik Road, Nasik and
residing at : RB-I-C-103, Traction Machine Workshop
Colony, Nasik Road, Nasik 422 101,
State of Maharashtra.
7. Balu Eknath Garje
Son of Eknath Raoba Garje,
date of birth : 03.06.1972, age : 44 years,
working as : Khalasi (Group "D") post,
under CWM, Traction Machine Workshop,
Central Railway, Eklahara Road Station,
Nasik Road, Nasik and residing at : RB-I-106-A,
Traction Machine Workshop, Central Railway,
Eklahara Road, Nasik Road, Nasik 422 101,
State of Maharashtra.
8. Avinash Prakash Bhavsar,
son of Prakash Motilal Bhavsar,
date of birth : 11.09.1978, age : 36 years,
working as : Khalasi (Group "D") post,
under CWM, Traction Machine Workshop,
Central Railway, Traction Machine Workshop,
Eklahara Road Station, Nasik Road, Nasik
and residing at : RB-II-220-D,
Traction Machine Workshop, Central Railway,
Eklahara Road, Nasik Road, Nasik 422 101,
State of Maharashtra.
9. Sameer Pandit Salve
Son of Pandit Sambhaji Salve,
date of birth : 16.01.1987,

age : 29 years, working as : Khalasi
(Group "D" post), under TMW,
Traction Machine Workshop,
Central Railway, Eklahara Road Station,
Nasik Road, Nasik and residing at : RB-II-209-C,
Traction Machine Workshop, Central Railway,
Railway Colony, Eklahara Road, Nasik Road,
Nasik 422 101, State of Maharashtra.

10. Santosh Shitaram Fokane,
Son of Damu Dhondiram Pagare,
date of birth : 02.06.1980, age:35 years,
working as Khalasi (Group D) post,
under CWM, Traction Machine Workshop,
Central Railway, Eklahara Road Station,
Nasik Road, Nasik and R/at Village & Post
Nanegaon, Taluka and Dist. Nasik, Nasik
422 202, State of Maharashtra.
11. Dagdu Karbhari Sanap
Son of Karbhari Dadajiba Sanap,
date of birth: 01.06.1970, age 45 years,
working as Khalasi (Group D) post,
under CWM, Traction Machine Workshop,
Central Railway, Eklahara Road Station,
Nasik Road, Nasik and R/at RB-I-104-C,
Traction Railway Colony, Nasik Road,
Nasik 422 101, State of Maharashtra.
12. Prakash Mhasu Gite,
Son of Mhasu Govind Gite,
date of birth: 20.10.1966, age 48 years,
working as Khalasi (Group D) post,
under CWM, Traction Machine Workshop,
Central Railway, Eklahara Road Station,
Nasik Road, Nasik and R/at RB-I-110-C,
Traction Railway Colony, Nasik 422 101,
State of Maharashtra.
13. Vijay Namdeo Jadhav,
Son of Namdeo B. Jadhav, date of birth:01.06.1968,
Age 47 years, working as Khalasi (Group D) post,
under CWM (Chief Workshop Manager),
(TMW) Traction Machine Workshop, Central
Railway, Nasik Road, Nasik and R/at Room No.119,
Rukhmini Nagar, Lokhande Mala, Jail Road,
Nasik Road, Nasik 422 101, State of Maharashtra.

14. Kale Sharad Balasaheb,
Son of Balasaheb Deoram Kale,
date of birth: 15.06.1987, Age 27 years,
working as Khalasi (Group D) post, under
CWM, Traction Machine Workshop, Central
Railway, Nasik Road, Nasik. R/at Village
Sukene, Post – Kasabe Sukene, Taluka-Niphad,
Dist. Nashik, Nasik 422 101, State of Maharashtra.
15. Saikhede Mangesh Nivrutti,
Son of Nivrutti Thamaji Saikhede,
date of birth: 06.03.1982, age 33 years,
Working as Khalasi (Group D) post, under CWM,
Traction Machine Workshop, Central Railway,
Nasik Road, Nasik. R/at Bhatiya College Lam
Road, Deolali Camp, Belatgawhan Nasik 422 101,
State of Maharashtra.
16. Balnath Ganpat Kangane,
Son of Ganpat Kolaji Kangane, date of birth:10.05.1976,
Age 39 years, working as Khalasi (Group D) post,
under CWM, Traction Machine Workshop,
Central Railway, Eklahare Road Station, Nasik Road,
Nasik. R/at RB-II-203-A, (TMW) Traction Machine
Workshop Railway Colony, Eklahare Road,
District Nashik, Pin Code – 422 101,
State of Maharashtra.
17. Nivrutti Dhamohar Shekle,
Son of Dhamohar Shekle, date of birth:11.12.1976,
Age 38 years, working as Khalasi (Group D)
post, under CWM, Traction Machine Workshop,
Central Railway, Nasik Road, Nasik. R/at RB-I-
103/D, Traction Railway Colony, Nashik Road,
Nasik 422 101. State of Maharashtra.
18. Dnyaneshwar Atmaram Shelke,
Son of Atmaram Kashinath Shelke,
date of birth: 20.05.1982, age 32 years, working as
Khalasi (Group 'D') post, under CWM, Traction
Machine Workshop, Central Railway, Eklahare
Road, Nasik. R/at (TMW) Traction Machine
Workshop Railway Colony, RB-II-218-D,
Eklahare Road, Nashik Road, Nasik 422 101,
State of Maharashtra.
19. Somnath Shivram Garje,
Son of Shivram Ravaba Garje, date of birth:01.06.1980,

Age 35 years, working as Khalasi (Group D) post, under CWM, Traction Machine Workshop, Central Railway, Eklahare Road, Nasik.
R/at (TMW) Traction Machine Workshop Railway Colony, RB-II-203-D, Eklahare Road, Nashik Road, Nasik 422 101, State of Maharashtra.

20. Bhausaheb B. Sanap,
date of birth: 15.01.1979, age 37 years,
working as Khalasi (Group D) post, under CWM, Traction Machine Workshop, Central Railway, Eklahare Road, Nasik. R/at (TMW) Traction Machine Workshop Railway Colony, RB-II-203-C, Eklahare Road, Nashik Road, Nasik 422 101, State of Maharashtra.
21. Balu Ramnath Bedade,
Son of Ramnath Vithoba Bedade,
date of birth: 05.01.1976, age 39 years, working as Khalasi (Group D) post, under CWM, Traction Machine Workshop, Central Railway, Eklahare Road, Nasik and R/at Shree Samrudhi Apartment, 2nd Floor, Room No.7, Opp. Holy Flower School, Nasik Road, Nasik 422 101, State of Maharashtra.
22. Dnyaneshwar Laxman Bedade
Son of Laxman Vithoba Bedade, date of birth: 15.05.1975, age 40 years, working as Khalasi (Group D) post, under CWM, Traction Machine Workshop, Central Railway, Eklahare Road, Nasik. R/at (Sairaj Nagar, Nasik Puna Road, Chehadi, Nasik Road, Nasik 422 101, State of Maharashtra.
23. Ramdas Shankar Ghuge,
Son of Shankar Ghuge, date of birth: 02.07.1976, Age 39 years, working as Khalasi (Group D) post, under CWM, Traction Machine Workshop, Central Railway, Eklahare Road, Nasik.
R/at Village Nibhoj, Taluka Sangamner, Dist. Ahmednagar – 422 611, State of Maharashtra.
24. Balkrishna Dadu Palshikar,
Son of Dadu Palshikar, date of birth: 29.12.1970, Age: 44 years, working as Khalasi (Group D) post, under CWM, Traction Machine Workshop, Central Railway, Eklahare Road, Nasik.
R/at RBI, Traction Railway Colony, Nashik Road,

Nasik 422 101, State of Maharashtra.

25. Jayant Gajanan Bhagwat,
Son of Gajanan Bhagwat, date of birth:05.11.1970,
Age 44 years, working as Khalasi (Group D) post,
under Sr. DEE Kurla (Carshed), Mumbai.
R/at Room No.2772, Mahalaxmi Nagar, Durga Murti
Mandir Tekadi, Ambernath (East), Dist. Thane,
Pin – 421 501, State of Maharashtra.

26. Vijaykumar Panchampuri Goswami,
Son of Panchampuri Gajrajpur Goswami,
date of birth:16.06.1957, age 58 years, working
as Khalasi (Group D) post, under CWM, Traction
Machine Workshop, Central Railway, Eklahare
Road, Nasik. R/at Railway Quarter-RB-II/201-B,
(TMW) Traction Machine Workshop Railway Colony,
Eklahare Road, Nasik 422 101,
State of Maharashtra.

... *Applicants*

(By Advocate Shri R.G. Walia)

VERSUS

1. Union of India, through
The General Manager,
Headquarters' office, Central Railway,
CSTM, Mumbai 400 001.
2. CWM (Chief Workshop Manager)
(TMW) Traction Machine Workshops,
Nashik Road, Nasik 422 101.
3. Divisional Railway Manager (DRM)
DRM's Office, Central Railway, Mumbai
Division, CST, Mumbai 400 001.
4. Divisional Railway Manager (DRM)
DRM's Office, Central Railway,
Poona Division, Poona 411 001.
5. Divisional Railway Manager (DRM)
DRM's Office, Central Railway,
Nagpur Division, Nagpur 440 001.
6. Divisional Railway Manager (DRM)
DRM's Office, Central Railway,
Bhusawal Division, Bhusawal – 425 201. ...

Respondents

(By Advocate Shri V.S. Masurkar)

ORDER (Oral)*Per : R.N. Singh, Member (J)*

Applicants 26 in numbers have filed the present application under Section 19 of the Administrative Tribunals Act 1985 challenging the order dated 25.11.2014 and 16.01.2015 (Annex.A-1 & A-2) whereby the lateral induction of applicants from the post of Group 'D' to another Group 'D' post has been cancelled and order has been passed to give effect to such decision.

2. The precise fact of the present case is that the applicants were initially appointed as Trackman, Gangman, Gateman all Group 'D' posts in various Divisions of the Central Railway. The Respondents issued Notification dated 13.06.2012 (Annex.A-3) inviting applications for filling-up the vacant post of Khalasi/Ferro Khalasi on the basis of 10% and 40% lateral induction from the Gangman, Safaiwala (Sweeper), Store Khalasi and other Group 'D' employees in Traction Machine Workshop, Nasik Road. The applicants applied for the same and were selected vide letter dated 11.02.2013 (Annex.A-4) and the selection of the

applicants were subject to the following conditions as indicated in the letter/order dated 11.02.2013:

- "1. No any Administrative/Vigilance/SPE case is pending against the employees.*
- 2. The Railway Quarters will be allotted on the basis of requirement to the employees at Traction Machin Colony. N. Road.*
- 3. The lean of the employees till one (01) year will be maintained in their parent(prior) Department. During the tenure of 01 year's period if not found fit in working in the Workshop or not found fit by any other reason the employees shall be sent back to their own department.*

The validity of the Screening period in respect of the aforementioned 26 eligible employees is fixed for one (1) month. Hence, release these employees before 15th March, 2013 at the transfer place otherwise Second List shall be published.

Please inform in advance to the Head of the Department about the relieving of the aforementioned employees.

3. Pursuant to applicants' selection vide letter dated 11.02.2013, the applicants joined Traction Machine Workshop, Nasik Road from 13.06.2013 to September 2013. Learned counsel for the applicants argues that the impugned orders cancelling the selection of the applicants is in violation of the principles of natural justice inasmuch as before taking such decision or passing the impugned orders, no show cause notice has been issued to the applicants. The

Applicants have also not been accorded any opportunity in any manner to explain their case before the competent authority. Learned counsel for the applicants submits that the selection and appointment of the applicants were in pursuance to the notification issued by the respondents and after the applicants were found eligible and suitable for the post by the respondents. He also submits that after being selected and appointed to such posts, the applicants are not liable to be transferred to their parent department though the post earlier being held by them were also in the same Grade i.e. Group 'D'. Moreover, in view of their appointment, the applicants have settled at the new place of posting, the learned counsel for the applicants submits.

4. In response to notice issued by this Tribunal, the respondents have filed their reply and have not disputed the aforesaid facts and the applicants have filed rejoinder and the respondents have filed their sur-rejoinder also. Learned counsel for the parties have also filed their written arguments.

5. Shri V.S. Masurkar, learned counsel for the respondents submits that no cause of action has accrued to the applicants inasmuch as the impugned orders are neither addressed to the applicants nor the same has been officially supplied to them by the respondents. He further submits that the applicants were selected against 40% quota who are below 45 years of age and in contravention of the eligibility conditions of age as notified in the notification. He submits that the applicants were required to be above 45 years of age. He further submits that a Vigilance inquiry in this case was conducted in May 2014 by the Vigilance Officer, Central Railway and on receipt of such report, the competent authority i.e. the General Manager, Central Railway has approved cancellation of such selection and impugned orders have been issued to the concerned authorities under the respondents only to give effect to such decision of the General Manager, Central Railway. With the assistance of the written submissions filed on behalf of the respondents, the learned counsel for the

respondents submits that the gist of the vigilance investigation is to the following effect;

"..(i) Two excess candidates have been empanelled against notified posts.

(ii) Selection Committee had not drawn any proceedings or brought out any criteria and procedure adopted by them for adjudging the suitability of the candidate.

(iii) Out of the 26 candidates selected, 22 were below 45 years of age, thus contravening the eligibility condition of age notified in the notification.

(iv) Application of one of the candidates which was not received through proper channel, was also considered for the selection.

In view of the above, findings in the Vigilance investigation, it was proposed to cancel the panel formed in the selection which was duly accepted and approved by the General Manager, Central Railway, CSTM.

11. The Dy. CVO(A&P)/Central Railway has communicated this office vide letter dated 25.11.2014 that "the competent authority has given approval for cancellation of empanelment of Khalasi selected against 10% and 40% lateral induction in workshop and Khalasi notified vide notification dated 13.06.2012 and advised for taking action accordingly."

6. In his rejoinder, the learned counsel for the applicants, Shri R.G. Walia, submits that the applicants were fulfilling all the eligibility conditions and in this regard he refers to the provision of Rule 179(xiv) of Indian Railway Establishment Manual (Annex.

A) to the written arguments on behalf of the applicants.

7. We have perused the pleadings on record and written arguments filed on behalf of the parties and have also considered the rival contentions.

8. The facts are not in dispute. The admitted position is that the competent authority has passed the orders of cancellation of selection and appointment of the applicants after considering some vigilance report. However, the fact remains that once the applicants were selected and appointed by the competent authority in pursuance to their notification and the applicants have been working under the respondents for quite some time, enforceable right has accrued to them to remain in the post in accordance with law. Their selection and appointment can be cancelled only by following principles of natural justice.. In the present case, the same is missing inasmuch as neither the applicants were participants in the said vigilance inquiry nor a copy of the said vigilance report has been provided to them

to enable them to make any representation or defend their selection and appointment.

9. In the facts and circumstances, we partly allow the OA and quash and set aside the impugned orders dated 25.11.2014 and 16.01.2015 (Annex. A-1 & A-2). However, the competent authority under the respondents shall be at liberty to proceed in the matter if he so desires, after serving a copy of the aforesaid vigilance report or any other documents on which he is likely to rely while taking a final decision. No order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

dm.

Jw
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1. The first part of the document is a letter from the President of the United States to the Congress.

2. The second part is a report from the Secretary of the Treasury on the state of the Union.

3. The third part is a report from the Secretary of the Navy on the state of the Navy.

4. The fourth part is a report from the Secretary of the War on the state of the War.

5. The fifth part is a report from the Secretary of the Interior on the state of the Interior.

6. The sixth part is a report from the Secretary of the Agriculture on the state of the Agriculture.

7. The seventh part is a report from the Secretary of the Commerce on the state of the Commerce.

8. The eighth part is a report from the Secretary of the Education on the state of the Education.

9. The ninth part is a report from the Secretary of the Health on the state of the Health.

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12. The twelfth part is a report from the Secretary of the Justice on the state of the Justice.

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14. The fourteenth part is a report from the Secretary of the War on the state of the War.

15. The fifteenth part is a report from the Secretary of the Navy on the state of the Navy.

16. The sixteenth part is a report from the Secretary of the Interior on the state of the Interior.

17. The seventeenth part is a report from the Secretary of the Agriculture on the state of the Agriculture.

18. The eighteenth part is a report from the Secretary of the Commerce on the state of the Commerce.

19. The nineteenth part is a report from the Secretary of the Education on the state of the Education.

20. The twentieth part is a report from the Secretary of the Health on the state of the Health.

21. The twenty-first part is a report from the Secretary of the Labor on the state of the Labor.

22. The twenty-second part is a report from the Secretary of the Finance on the state of the Finance.

23. The twenty-third part is a report from the Secretary of the Justice on the state of the Justice.

24. The twenty-fourth part is a report from the Secretary of the State on the state of the State.

25. The twenty-fifth part is a report from the Secretary of the War on the state of the War.

26. The twenty-sixth part is a report from the Secretary of the Navy on the state of the Navy.

27. The twenty-seventh part is a report from the Secretary of the Interior on the state of the Interior.

28. The twenty-eighth part is a report from the Secretary of the Agriculture on the state of the Agriculture.

29. The twenty-ninth part is a report from the Secretary of the Commerce on the state of the Commerce.