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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

O.A. NO. 2257/2003

New Delhi, this the 9th day of August, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Smt. Malti Devi Wd/o Late Sh. Jai Narain,
Working as Office Khalasi,
In the Office of AEN/Hort. Northern Railway,
Delhi Division, New Delhi
(By Advocate : Shri Sudesh Goel)

... **Applicant**

Versus

1. Union of India, through the General Manager,
Northern Railway, Baroda House, New Delhi
2. Divisional Railway Manager,
Northern Railway, Delhi Division,
New Delhi Railway Station, New Delhi
3. D.E.N. (Hort.),
Northern Railway, Delhi Division,
D.R.M's Office, Near New Delhi Railway station, New Delhi
4. The Divisional Personnel Officer,
Northern Railway, New Delhi
(By Advocate : Shri D.S. Jagotra)

... **Respondents**

ORDER (Oral)

By Sarweshwar Jha, A.M. :

This application has been filed against the order of the respondents dated 10.6.2003 whereby his representation as submitted in compliance of the order of the Tribunal dated 11.2.2003 in OA No.819/2002 has been rejected by the respondents. Thus, this is the second round of litigation by the applicant.

2. The applicant, who was initially appointed on 10.2.1997 to the post of Mali Khalasi on compassionate ground on the death of her husband on 14.9.1996 in the Office of S.S.C. (Hort.), New Delhi and who made a representation to the authorities concerned for change of her category from the post of Mali Khalasi to that of Office Khalasi as per rules, was approved, vide order dated 5.5.1999, for being adjusted against available vacancy in the said post. A vacancy in the post of Office Khalasi became available in May, 1999 on the

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death of one Shri Mahavir Singh, Office Khalasi on 07.05.1999. The applicant made her representation on 2.6.1999 to the competent authority for her posting against the said vacant post. She was directed to work as Office Khalasi in December, 1999 and she has been working as such. However, the applicant was directed to work as Office Khalasi, necessary formal orders were not issued in this regard. Accordingly, the applicant kept making representations in this regard.

3. Finding no response to her representations, she filed OA No.819/2002 whereby the respondents were directed to dispose of her representations in the light of the relevant rules, instructions and judicial pronouncements on the subject. In compliance of the said directions, the respondents disposed of her representations vide order dated 10.6.2003 as mentioned above. She is not satisfied with the disposal of her representations and hence this OA.

4. The respondents, in their reply, have submitted that they have passed a detailed order in compliance of the Tribunal's order as passed in OA No.819/2002. In the present OA, according to the respondents, no fresh ground, fact or rule has been brought up to justify filing of the OA and accordingly it is barred by the principle of res judicata and deserves to be dismissed in limine.

5. On perusal of the facts as submitted by the respondents in their reply, it is observed that they have not approved the change of category in respect of the applicant and there is no formal order issued in this regard. While necessary recommendation in this regard was reported to have been made by the DEN/Horticulture, the competent authority did not accept it. They have also confirmed that they have made no fresh appointment to the category of Office Khalasi. They have reiterated that the post of Office Khalasi became redundant vide letter dated 5.7.2000 (Annexure R/2) and, accordingly, no appointment is being made in this category. The claim of the applicant, therefore, is not justified under the rules.

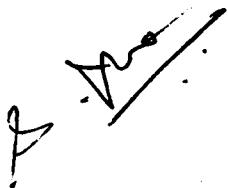
6. The applicant, through her rejoinder, has taken objection to the position taken by the respondents that the OA is barred by the principle of res judicata, as the same has been filed in pursuance of the orders of the Tribunal as given in OA No.819/2002. As she is not



satisfied with the disposal of the matter by the respondents, she is before the Tribunal with the present OA. She has also questioned the fact regarding the post of Office Khalasi having become redundant and that no fresh appointment is being made against the said post. In this connection, she has referred to the appointment of Shri Kailash Yadav as Office Khalasi and has submitted that the respondents have put in incorrect facts. She has also claimed that the post of Office Khalasi is exclusively reserved for widows. Her grievance is that the said appointment of Shri Kailash Yadav has been made while her representation in this regard was pending with the respondents. She has also given another example of one Shri Juggi Lal, who was a Peon and who was transferred to the post of Office Khalasi and in his place a casual employee working as Office Khalasi was transferred. She has further claimed that her prayer is that directions may be given to the respondents to change her category from the date of her representation, which is prior to declaring the post redundant. The applicant has also submitted that the order of the respondents does not completely prohibit recruitment to the redundant category. According to her, reliance on the order dated 12.5.2000 in this regard is, therefore, misconceived.

7. On closer examination of the facts of the case, it is observed that the applicant, being a lady, has sought the category of her post being changed to Office Khalasi and that she has already been directed to work as Office Khalasi, though her designation has not been finally changed. She has also cited the examples of two persons, both men, who have been posted as Office Khalasis, one by appointment and the other by transfer. If it is to be believed that the post of Office Khalasi is first to be given to a female employee, the request of the applicant should have been acceded to before considering the cases of other persons. It was all the more desirable to have acceded to her request when she had already been directed to work as Office Khalasi.

8. While the respondents have referred to the post of Office Khalasi as having become redundant, they have not clarified whether with that all the incumbents of the post have been redesignated. In the absence of this information, it is assumed that they continue to be Office Khalasis. Therefore, to argue that no appointment can be made to



the post of Office Khalasi even in the case of a person who has been seeking such a change from a date earlier than the date on which the order declaring the post of Office Khalasi as redundant was issued is not logical. While it can be appreciated that no new appointment from the market can be made to the post of Office Khalasi, it should not prohibit changing the designation of a Mali Khalasi, as in the case of the applicant, to that of Office Khalasi keeping in view the personal difficulties of the applicant in the matter. The respondents were at liberty to seek relaxation, if any, for extending the benefit of re-designation to the applicant.

9. Having regard to the above and after having heard the learned counsel for the parties, this OA is allowed with a direction to the respondents to extend the benefit of the post of Office Khalasi to the applicant, if she is otherwise eligible for the post with reference to the dates on which Shri Kailash Yadav and Juggi Lal were given the benefit. The respondents are directed to ensure compliance of this order within a period of three months from the date of receipt of a copy of this order. No costs.



(Sarweshwar Jha)
Member (A)

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