

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1454 of 1997

New Delhi, this the 6 day of February, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

1. Vasudev S/o Shri Agan Chand, Regional Training Institute, New Delhi.
2. R. Mohan, NSSCEN Complex, Sector 29, Faridabad.
3. Ramesh Chandra, NACEN Complex, Sector 29, Faridabad.
4. Mohinder, Regional Training Institute, Pushpa Bhawan, New Delhi.
5. Zahid, NACEN Complex, Sector 29, Faridabad.
6. Guman Singh, S/o Shri Bharosa Singh Negi, Customs Hostel, A-13-A, MIG Flats, Mayapuri, New Delhi - 110064.
7. MB Sherpa NACEN Complex, Sector 29, Faridabad.
8. Rajbir, S/o Shri Shri Singh, A-13-A, MIG Flats, Mayapuri, New Delhi.
9. Satish Regional Training Institute, New Delhi.
10. Shankar Dutt, NACEN Complex, Sector 29, Faridabad.
11. Rajinder Sharma, Pushp Vihar Hostel, New Delhi.
12. Laljit, NACEN Complex, Sector 29, Faridabad.
13. Chandeshwar, Regional Training Institute, New Delhi.
14. Ram Kishan, Customs Hostel, A-13-A, MIG Flats, Mayapuri, New Delhi-110064.
15. Raj Kumar, Customs Hostel, A-13-A, MIG Flats, Mayapuri, New Delhi.
16. Mohan Lal, NACEN Complex, Sector 29, Faridabad.
17. Ms. Mani, NACEN Complex, Sector 29, Faridabad.
18. Ram Kishan, NACEN Complex, Sector 29, Faridabad.

19. Jagbir Singh, Regional Training Institute, New Delhi.

20. BS Rawat, NACEN Complex, Sector 29, Faridabad.

21. Ashok NACEN Complex, Sector 29, Faridabad.

- APPLICANTS

(By Advocate Ms. Hetu Arora)

Versus

1. The Secretary, Department of Revenue, Ministry of Finance, North Block, New Delhi.

2. The Chairman, Central Board of Excise and Customs, North Block, New Delhi.

3. The Member (Personal and Vigilance), Central Board of Excise and Customs, North Block, New Delhi.

4. The Chief Administrative Officer, National Academy of Customs Excise and Narcotics, NACEN Complex, Sector 29, Faridabad - 121008.

5. The Director General of Inspection, Customs and Central Excise, 5th Floor, C.R. Building, IP Estate, New Delhi.

- RESPONDENTS

(By Advocate Shri Madhav Panikkar)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The prayer in this Original Application is for a direction to the respondents to regularise the applicants' against permanent vacancies as per the directions issued by this Tribunal by its orders dated 27.11.1992 in O.A.1808 of 1991, Shiv Bahadur & Ors Vs. Union of India, and dated 18.4.1996 in MA 4037/1994. By these orders the Tribunal directed the respondents to carry out a review of the vacancies available not only in the hostels of the National Academy of Central Excise, Customs & Narcotics (hereinafter referred to as "the Academy") located at Delhi but also in other units of the

Department as well as in other cadres like Sepoy etc. It is further directed that till such time they are regularised they shall be paid the minimum wages of the scale in accordance with the scheme evolved by the Department of Personnel and Training on 7.6.1988. These directions were reinforced by another order dated 18.4.1996 to explore the possibilities of regularising the applicant against permanent vacancies. These directions were issued in the light of the fact that the applicants were employed on various dates between 1.1.1979 and 8.9.1988 and by now they have worked between 10 to 15 years. The prayer for interim relief arose on account of the fact that the respondents wanted to recruit to fill up certain posts.

2. The learned counsel for the respondents stated at the time of hearing that the new vehicles were sanctioned and they shall have to be managed without any sanction of new posts of Drivers. This was part of the order dated 3.12.1996 under which a large number of vehicles were sanctioned to various Field Formations of the respondents. In view of this ban, respondent no.5 i.e. the Director General of Inspection has been trying to recruit Peons who know driving so that the smooth running of the organisation is facilitated. The intention was to allow the Peons to work as Drivers and facilitate the running of the Staff Cars. It is stated that the interviews were conducted for the post of Peons by inviting applications from Ex servicemen as also the candidates sponsored by the Central Employment

Exchange, Kirbi Place, Delhi. All temporary status candidates including the applicants have been considered and some of the senior employees were accommodated. As far as respondent no.5 is concerned, 7 new vehicles have been sanctioned by the Ministry for his organisation. It is made very clear that the applicants were also considered along with others for this purpose. The letter issued by respondent no.5 to the Administrative Officer of the Academy dated 10.6.1997 is placed on record. All Group 'D' employees who have been allowed temporary status were directed to appear for interview and were directed to report to the Inspecting Officer (Admn). In that list the applicants have figured.

3. The learned counsel for the applicants states that this procedure violates the very spirit and the substance of the orders of this Court referred to above wherein the respondents were directed to explore the possibility of absorption of surplus staff. It is also submitted that the regular vacancies of Peons now sought to be filled up by Group 'D' employees having driving experience is against the spirit of the orders of this Court.

4. I have heard the counsel appearing on both the sides. Two broad questions arise are - (i) Are the respondents precluded from inviting applications from other sources and are they supposed only to confine the interview to casual employees working in the organisation who were conferred temporary status? To put up in other words, are the

respondents compelled to confine the selection for Peon-cum-Drivers amongst the applicants and such like others who have put in a large number of years? (ii) If there are vacancies in the cadre of Peon, are the respondents compelled to fill up only the posts of Peons and can they not prescribe additional qualification of driving? I am afraid I have to answer the questions against the applicants on both the counts.

5. The facts are clear that respondent no.5 has been directed to manage the new vehicles with Peons who know driving. It is settled law that the employer can prescribe any condition or qualification for recruitment to a post. This is an age of fast changing technology. We are in an age where the need for man power is replaced by the compulsions of automation. It is settled law that the Government has an exclusive discretion whether to create new posts or to abolish existing posts. The respondent no.5 has only one option. He cannot recruit a Driver exclusively as a Driver. He has only 7 vacant posts of Peons. He has every right under law to prescribe an additional qualification that only such Peons who have proficiency in driving can be recruited permanently. This is a right which is guaranteed to every employer. The qualifications for a post change with the change in the times. A time may come that the employer can ask a Peon to drive the office car and also during leisure hours to work as a data entry operator. If the unemployed youth in this country with additional qualifications

available in a large number are crying for a livelihood, the recruitment conditions must change. A peon cannot say that he will only answer the bell and do other routine errands and nothing more. Every minute of the Government servant's time has to be gainfully employed because the public money is spent on his salary and livelihood. Therefore, the contention that only the Peons' vacancies shall be filled up only by a person who conventionally does the job of a Peon is rejected. I will go a step further. The employer has a right to ask any employee to do different jobs at different times. This is a public service. The employer has every right to utilise the services in as multifaceted manner as is possible and feasible in the public interest. To take the matter a logical step, step ahead - a Peon can drive the staff car can be a data-entry operator, and also can look after several other aspects. The crisis in this country is that man power is not properly utilised, particularly in Government service and in public sector undertakings. I, therefore, firmly reject the contention advanced by the learned counsel for the applicants.

6. This Court in the orders referred to above has only directed that efforts should be made to fill in the posts available from out of the temporary status casual labourers. There was no direction that whenever a vacancy arises, it is only these very people who should be engaged. A substantive vacancy in a Government job is subject

to Articles 15 and 16 of the Constitution. The Constitution directs that while filling a public post every opportunity should be given to all those who are qualified for that job. Any arbitrary restriction in the selection is violative of this Constitutional mandate. If the 7 posts are to be filled up only from out of the few applicants here, the employer is deprived of the best talent which he is entitled to because of a selection. A government as an employer always seeks to employ a competing person who is proved to be the best and the most excellent. The whole philosophy of employment through the Public Service Commission or through a Selection Committee at a lower level is based on this premise. To direct that all the posts should be confined to in-house selection of temporary status casual labourers only and exclusively is violative of the constitutional mandate. I, therefore, use the doctrine of reading down this Courts orders referred to above to say that they are not meant to deprive all other willing and qualified persons willing to compete in a selection. I, therefore, hold that the respondents are justified in considering the applicants along with all others who are suitably qualified for this purpose.

7. In the result, the Original Application is dismissed. The interim order by which the result of selection was stayed is hereby vacated.

Parasuram Sahu
(N. Sahu) 6298
Member (Admnv)

rkv.