

Central Administrative Tribunal
Principal Bench: New Delhi

OA 277/97

and

OA 234/97

New Delhi this the 19th day of March 1997.

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

OA 277/97

Shri Jugal Kishore Meena
S/o Sh. Ram Shai Meena
R/o WZ-30
New Hira Park
Dicchau Road
Najafgarh
New Delhi.

...Applicant.

OA 234/97

Shri Kishan Lal Verma
S/o Sh. Bhori Lal Verma
R/o Gaur Bhawan
Gali No.40
Sadh Nagar-II
New Delhi.

...Applicant.

(By advocate: Shri V.P.Sharma)

Versus

Union of India through

1. The Director General
Telecom Board
Dak Tar Bhawan
New Delhi
2. The General Manager (Telecom)
Rajasthan Circle
Jaipur (Rajasthan)
3. The Telecom District Manager
Alwar (Rajasthan)

...Respondents.

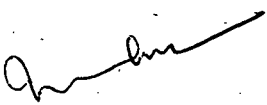
(By advocate: Shri B. Lall)

O R D E R

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

Common facts and grounds are involved in both these OAs and, therefore, they are disposed of together by a consolidated order. It is sufficient to take the facts of OA 277/97 in detail.


2. The grievance in this OA is against the alleged injustice



to the applicant in preferring " freshers for appointment to Class-IV posts ". The applicant seeks a direction for consideration of his case for appointment to the post of Mazdoor Safaiwala after suitable relaxation in age and education. (5)

3. It is stated by the applicant that he was "engaged" as casual labour on 11.6.90 and worked upto April 1993 in the office of the Telecom District Manager, Alwar. Thereafter he was disengaged after completion of work. Respondents in their counter stated that the applicant had worked only for 210 days in the year 1986 and "some days in the year 1994". "He had not completed 240 days and as such, was not entitled to the benefits of grant of temporary status". Learned counsel for the applicant Shri V.P. Sharma stated that the applicant worked as a daily wage earner - i.e. - every day is a fresh engagement and there is no record of his engagement. As the respondents have categorically stated that the applicant did not work for 240 days in a year and in the absence of any evidence to controvert this, I accept this statement of the respondents in this regard.

4. In the year 1995, the respondents invited applications through Employment Exchange for filling up 21 posts of SC/ST. The posts were most specifically of Mazdoor and Safaiwala. Selection was conducted on 24.4.97 and the final list was published on 27.4.97. The applicant has not been issued an appointment letter whereas 19 others have received appointment letters. The challenge of the applicant to the above selection is that he has a preferential right for appointment over fresh persons from open market as he has already put in some service in the department. His next grievance is that the respondents have not complied with the provisions of "Casual Labour (Grant of Temporary Status & Regularisation) Scheme" of the Department of Telecommunication, 1989. This Scheme mandates that " vacancies in the Group-D cadre



in various offices of the department of Telecommunication would be exclusively filled by regularisation of casual labourers and no outsiders would be appointed to the cadre except in the case of appointment on compassionate grounds, till the absorption of all the existing casual labourers fulfilling the eligibility conditions including educational qualifications prescribed in the relevant recruitment rules". There is a provision for age relaxation for the period for which he worked continuously as a casual labourer. The applicant entertained several fears that the respondents might not have selected him on the ground that he crossed 30 years of age and also on the ground that he did not enclose proper certificate of educational qualifications. It was stated by the learned counsel for the applicant that he was the petitioner in OA 600/92 before the Principal Bench seeking the relief to be engaged in preference to juniors and outsiders and this OA was disposed of with a direction to the effect, namely, that the case of the applicant for re-engagement should be considered in preference to persons with lesser length of service and outsiders. The Tribunal directed maintenance of a register of casual labourers containing the period of service rendered by them. In view of the above order of the Tribunal, the present action of the respondents in not giving him an appointment in the selection dated 27.1.97 is all the more unfair.

Learned counsel for the respondents cited the decision in A. Mohan & Ors Vs. UOI 1993 (2) ATJ P.1 to substantiate his contention that the applicant could not have assailed the selection after participating in the examination process. An instruction of DoT letter No. 266-5/93-STM/SCT dated 17.1.95 was cited. In this instruction, it is stated that in case of non-availability of required number of reserved category of persons as casual



7

labourers with temporary status, the shortfall is to be filled up through direct recruitment from Employment Exchange etc. only from SC/STs and physically handicapped persons.

5. Learned counsel for the respondents further emphasised that the applicant did not complete 240 days of service in any year and, therefore, he was not eligible for consideration for conferment of temporary status. The second point made by him is that this selection was for SC/ST exclusively to fill in the backlog of vacancies to regular posts of Mazdoors in SDO (Phones), Alwar. He made it very clear that the apprehension of the applicant that he was not appointed on account of inadequate vacancies or on account of over age was unfounded. The number of departmental and outside candidates are exhibited as under:

	SC		ST	
	Dept.	Thru E.E.	Dept.	Thru EE
1. Total number of candidates called for interview	3	12	3	15
2. Total number of candidates attended.	3	10	3	12
3. Total number of candidates selected/appointed.	2	5	1	8
	7		9 = 16	

For Sweepers (SC) only

1. No. of candidates called for	8
2. No. of candidates attended	8
3. Selected and appointed	4

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8

6. I have enquired to ascertain at the time of hearing that on the date of selection there were only 6 departmental candidates and the respondents had to fill 21 vacant posts exclusively for SCs/STs. The applicant is no doubt a SC/ST candidate, but he was considered by the selection committee. The proceedings of the selection committee were furnished to him by the learned counsel for the respondents. There were three officers who assigned marks at the time of interview. Applicant's name figured but he secured only 36 marks whereas in the category of Mazdoors and Safaiwalas, many others have secured far higher marks. Because of the marks position, he stands at Sl. No.4 in the waiting list of selected candidates of 20. Among the 20 selected candidates, 16 belong to regular Mazdoors and 4 to Safaiwalas. Thus having been duly considered and selected, the apprehensions of ^{/having been disqualified on account of} over-age and inadequate educational qualifications have proved to be unfounded.

7. The next question is that as the applicant himself had worked as casual labourer, is he entitled to the selection as a matter of course or is there a discretion amongst selecting authorities in this regard? The provisions of the Scheme have been mentioned earlier, but it is also mentioned in this Scheme that outside recruitment for filling up the post of Mazdoors will be permitted when eligible casual labourers are not available. Respondents, therefore, are fully justified in undertaking the selection by requisitioning candidates from Employment Exchange. The applicant is not a temporary status casual labourer and once this scheme allows an option to the respondents to carry out selection by inviting applications from outsiders, it becomes a selection on merit and the selecting authorities have every right to choose amongst the persons who appear before them. As the table shows, departmental candidates had appeared with outsiders and the departmental candidates have been selected. Applicant has also

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9

been selected but he was placed down below in the merit list. In my view, there is no infirmity in the procedure. There is no allegation of bias or colourable exercise of power in selecting the candidates. Once the rules themselves allow respondents to carry out a selection, their hands cannot be tied ~~down~~ ^{by} any other restrictions, ^{is} that if the selecting committee considered that a departmental candidate is unfit or undesirable, they have every right to say so. The process of selection is undertaken only to exclude and weed out persons who are considered unsuitable for the job. Even here, the applicant has been selected and kept in the waiting list. Therefore, there ^{is} no merit in this application. However, the respondents should keep a watch over the vacancy position, and if and when any vacancy arises, the applicant should be considered for appointment. Needless to say that whenever work is available, the applicant should be preferred to juniors and outsiders. With these observations, OA is disposed of - dismissed, and in the circumstances of the case, the parties will bear their own costs.

The above order also applies to OA 234/97. Respondents will consider the case of Shri Kishan Lal Verma also for future vacancies.

N. Sahu
[N. Sahu]
Member (A)
19/3/97

aa.