

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2937/97
T.A. No.

DATE OF DECISION 25-8-2000

Kulvendra Petitioner(s)
Sh. V.K. Garg Advocate for the
Petitioner(s)

Versus

U.O.I. Respondents
Sh. R.V. Sinha Advocate for the
Respondent(s)

CORAM:

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Mrs. Shanta Shastri, Member(A)

1. Whether Reporters of local papers may be —
allowed to see the Judgement?
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the —
fair copy of the Judgement?
4. Whether it needs to be circulated to —
other Benches of the Tribunal?

(Dr. A. Vedavalli)
M(J)

Cases referred

1. Ghaziabad Dev Authority Vs. Vikram Chaudhary
(1995(5)SCC 210).
2. Anil Kumar Gupta Vs. State of Bihar (1996(7)SCC 83).
3. E. Ramakrishnan & Ors. Vs. State of Kerala & Ors.
(1996(10)SCC 565).
4. P. Ravindran & Ors. Vs. Union Territory of Pondicherry
& Ors. (1997(1)SCC 350).
5. G. Sudhakar & Ors. Vs. LIC of India & Ors.
(1999 Lab. I.C. 627).

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2937/97

New Delhi this the 25th day of August, 2000.

Hon'ble Dr. A. Vedavalli, Member(J)
Hon'ble Mrs. Shanta Shastry, Member(A)

Sh. Kulvendra,
S/o Sh. Ram Kumar,
R/o H.No.37,
Vill. & P.O. Barwala,
Delhi-39.

.... Applicant.

(Present none even on second call)

Versus

The Secretary,
Deptt. of Electronics,
Electronics Niketan,
6, CGO Complex,
New Delhi-3.

.... Respondent.

(through Sh. R.V. Sinha, Advocate)

ORDER

Hon'ble Dr. A. Vedavalli, Member(J)

When the case came up for hearing on 02.08.2000 no one was present on behalf of the applicant even on second call. Applicant was not present even on an earlier occasion, namely, 31.07.2000. In the circumstances, the O.A. is being disposed of after hearing the learned counsel for respondents and on the basis of pleadings and material papers and documents placed on record. The written submissions filed by both the parties after the hearing have also been perused.

2. The applicant, Kulvendra who claims that he was working as a Staff Car Driver under the respondents is aggrieved by the termination of his services by an alleged verbal order passed by the

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respondents on 17.11.97. Facts of this case briefly are that the applicant who was nominated by the Employment Exchange was asked to appear for an interview for the post of Staff Car Driver on daily wage basis on 27.03.97 in the Department of Electronics by the respondents' letter dated 12.03.97 (Annexure-V). Admittedly the applicant after selection worked for two short spells of 89 days i.e. from 31.03.97 to 25.06.97 and from 28.06.97 to 07.10.97 i.e. for a total number of (120) days in a period of six months. He was sent alongwith four other candidates for a driving test at E&M workshop, Safdarjung Airport, New Delhi by the respondents letter dated 27.10.97 as per the requirements of the department (Annexure-III to counter). He failed in the said driving test according to the respondents as per the workshop letter dated 11.11.97 (Annexure-IV to counter). Thereafter his services were terminated by the alleged verbal order dated 17.11.97. He sent a legal notice dated 18.11.97 (Annexure-x) to the respondents but received no reply. Thereafter the present O.A. was filed by the applicant seeking the following reliefs:-

"(a) set aside oral order dt. 17.11.1997 of termination of services of the applicant;

(b) declare applicant to be in continuous service in the Grade of Staff Car Driver; and

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(c) direct the respondents to regularise services of the applicant as Staff Car Driver and grant him pay in the Scale admissible to that Grade."

3. The O.A. is contested by the respondents who have filed their counter to which a rejoinder has also been filed by the applicant.

4. The main contention of the applicant is that he possesses the requisite qualifications for the post of Staff Car Driver and was appointed in a substantive capacity against a regular permanent vacancy and not on daily wages though a formal letter of appointment was not issued. He was forced to accept the job on daily wages due to his economic needs. He was being paid Over Time Allowance and Conveyance Charges as per the documents at Annexures-VII & VIII respectively and an Identity Card was also issued to him (Annexure-VI). He submits that, inter alia, the above documents show that he was working in a substantive capacity and not on daily wages. His second main contention is that though he was declared as successful in the aforesaid driving test, the respondents have illegally terminated his services by the impugned verbal order of termination which deserves to be quashed and set aside. He prayed for the grant of reliefs as claimed in the OA.

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The applicant in his written submissions has relied upon the decisions of the Apex Court in Ghaziabad Dev Authority Vs. Vikram Chaudhary (1995(5) SCC 210) and Anil Kumar Gupta Vs. State of Bihar (1996(7)SCC 83) in support of his contentions.

5. The respondents in their reply have denied the first contention of the applicant that he was appointed in a substantive capacity against a regular vacancy of Staff Car Driver. It was submitted by the respondents that the vacancy was for a short duration on daily wage basis. This fact is quite evident from the letter dated 12.03.97 (Annexure-V) filed by the applicant himself and the requisition dated 22.01.97 sent to the Employment Exchange (Annexure-IIA to counter). Further, it is a stop gap arrangement to fill up vacancies which arose by long term leave of regular Staff Car Drivers. No formal letter of appointment was issued as the engagement of applicant was purely on daily wage basis for a short duration. It was also submitted by the respondents that the second contention of the applicant that he was declared successful in the driving test also is not correct as he failed in the said test as per the letter dated 06.11.97/11.11.97 from the Workshop (Annexure-IV to counter).

6. Learned counsel for respondents Shri R.V. Sinha submitted that the contentions raised by the applicant are absolutely without any evidence and the O.A. is devoid of any merit. He prayed that the O.A.

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may, therefore, be dismissed with costs. He relied upon the decisions of the Apex Court in E. Ramakrishnan & Ors. Vs. State of Kerala & Ors. (1996(10)SCC 565); P. Ravindran & Ors. Vs. Union Territory of Pondicherry & Ors.(1997(1)SCC 350) and G. Sudhakar & Ors. Vs. LIC of India & Ors. (1999 Lab. I.C. 627).

7. Learned counsel for the respondents also made a statement at the Bar that the respondents are taking steps to fill up some posts of Staff Car Drivers on regular basis and a requisition dated 28.03.2000 was sent to the Employment Exchange in this regard. The applicant was also informed by the respondents letter dated 20.07.2000 and was given an opportunity to apply for the same, if he is willing. Copies of the said documents have been filed by the respondents. He further submitted that in case the applicant applies for the said post, he will be considered alongwith other candidates as per the relevant rules and instructions.

8. The applicant in rejoinder has generally reiterated his submissions and contentions made in the OA. He has also filed a copy of a circular dated 16.12.97 issued by the respondents calling for applications from eligible candidates from among regular Despatch Riders and Group-D employees working in all divisions of the department of Electronics regarding filling up of two posts of Staff Car Drivers on regular basis by transfer. He contended that the said circular shows the existence of regular vacancies of Staff Car Driver.

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9. We have considered the matter carefully.

10. Re the first main contention of the applicant that he was appointed in a substantive capacity against a regular vacancy of Staff Car Driver, it is quite evident from the letter dated 12.03.97 (Annexure-V) filed by the applicant himself that he was called for an interview for the post of Staff Car Driver on daily wage basis for a short duration and the candidates were asked to bring the requisite documents including a valid driving licence. The requisition letters to the Employment Exchange from the respondents (Annexure-II to counter) also shows that the said posts are to be filled up on daily wage basis and not on regular basis. In the circumstances, the applicant who is stated to be a matriculate cannot ^{be} feign ignorance about the terms and conditions of his engagement and he had himself admitted in the O.A. that he accepted the engagement on daily wages. The circular which was filed by him alongwith rejoinder as mentioned (supra) will not also help him since there is nothing to show that the initial engagement was not on daily wages. The decisions of the Supreme Court mentioned supra on which he relies will not also help him as the facts and circumstances in the present case are quite different.

11. In the above facts and circumstances, we find that the aforesaid contention of the applicant that he was appointed in a substantive capacity against a

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regular vacancy is utterly baseless and hence cannot be sustained.

12. Re the second main contention of the applicant that he was declared as successful in the driving test held by the respondents, it is seen from the letter from the workshop dated 06.11.97/11.11.97 (Annexure-IV to counter) mentioned supra that out of five candidates who were examined, only one candidate, namely, S.K. Majhi was declared as "pass". The applicant is at Sl.No. 3 among the 5 candidates who were sent for driving test as per the respondents letter dated 27.10.97 (Annexure-III to counter). The applicant has also failed to produce any document to establish that he was declared as successful in the said Driving Test held by workshop. In the above facts and circumstances, we find that the aforesaid contention of the applicant also is without any basis and hence cannot be accepted. In the view which is taken by us regarding the aforesaid main contentions, there is no need to go into the minor contentions raised by the applicant in this OA.

13. The applicant admittedly has worked only for two brief spells in a period of 6 months under the respondents as a Staff Car Driver on daily wages as noted supra. His services were terminated after he failed to qualify in the driving test. He has failed to establish with supporting material the existence of any

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valid or tenable ground on which he could be granted the reliefs which have been sought by him in this OA. He has also not been able to prove the violation of any of his vested legal rights by the respondents.

14. On the facts and circumstances of this case and in the light of the foregoing discussion, we find that the O.A. is absolutely devoid of any merit. We do not find any valid reason to interfere with the impugned order. In the result, the O.A. is dismissed.

15. However, in view of the statement made by the 1d. counsel for the respondents at the Bar mentioned and with a view to meet the ends of justice it is directed that in case the applicant applies for the aforesaid post of Staff Car Driver on regular basis, he should be considered by the respondents alongwith other eligible candidates, if any, on his merits in accordance with the relevant rules and instructions and giving due weightage to his past service under them and in preference to his juniors and outsiders.

16. The O.A. is disposed of as above. No costs.

Shanta S.

(Mrs. Shanta Shastry)
Member(A)

A. Vedavalli

(Dr. A. Vedavalli)
Member(J)