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Central Administrative Tribunal
Principal Bench

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O.A. No: 1446/91

New Delhi, this the 3rd day of August, 1995.

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri B.K. Singh, Member (A)

1. Shri P.C. Rana
son of Shri Ram Dass Rana,
r/o 98, Aliganj,
New Delhi- 110 003.
2. Shri D.B. Gurung,
Son of Shri Bhim Bahadur Gurung,
R/o 785, R.K. Puram,
Sector-II,
New Delhi- 110 022.

Applicants

(By Shri R.K. Gupta, Advocate)

Versus

Union of India through:

1. The Secretary,
Ministry of Home Affairs,
North Block Secretariat,
New Delhi- 110 001.
2. The Director General,
Intelligence Bureau,
North Block,
New Delhi.

Respondents

(By Shri V.S.R. Krishna & Shri B. Lall,
Advocates)

ORDER

by Hon'ble Shri J.P. Sharma, Member (J)

The applicants were engaged on casual basis as
Fielder (MT)/Driver w.e.f. 3.11.1986 and 18.4.1986
respectively. Their grievance is that they have not been

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regularised on a regular vacancy of the Driver/Fielder (MT) though they possess the requisite driving licence and have also got the experience as prescribed under the rules. However, they are non-matric which is the essential qualification required as per recruitment rules issued by the Ministry of Home Affairs on 9.4.1984, the recruitment rules show that this/^{is a}General Central Service/^{Gen. C.}post and the essential qualification besides others is the matriculation or equivalent as regards educational qualification. The post is to be filled up by direct recruitment failing which by transfer on deputation.

The applicants jointly filed this application in June, 1991 when they were still engaged on casual basis and by the order dated 27.6.1991, it was directed that the applicants may be considered for appointment alongwith others in pursuance of the advertisement issued by the Intelligence Bureau, Ministry of Home Affairs on 15th September, 1990 and further it was directed that in the meantime the respondents shall not dispense with the services of the applicants and that interim order continues.

The respondents on notice, contested this application and stated that since the applicants do not qualify for appointment to the post on regular basis as they do not possess the requisite educational qualification of matric or qualification which is essential for appointment to the post of Fielder(MT/Driver. The applicants also could not be

regularised inspite of the fact that they have put in more than 206 days working in their engagement because the regularisation is desired for a group 'C' post but the circular of D.O.P&T is with respect to a regularisation of casual worker in group 'D' post.

It is said that the applicants have no case.

The applicants in their rejoinder re-iterated the same facts as averred in the original application. Regarding the recruitment rules, it is stated that the rules are not applicable to the case of the applicants but it is not shown as to how the recruitment rules are not applicable.

We have heard the learned counsel for the parties at length and perused the record. The contention of the learned counsel is that since they have been given engagement as casual workers and that they have worked nine for a more than 9 years so the respondents should have regularised them on the vacant post of Fielder(MT)/Driver. However, merely because a person is working on a post continuously on a casual basis will not entitle him for regularisation if he does not qualify as per the recruitment rules for appointment to the said post. Both the applicants

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are non-matric and they do not possess the minimum educational qualification prescribed for the post. The learned counsel argued that the respondents could have done it by relaxing the rules but the rules cannot be relaxed with regard to the essential qualification and the rules are clear on the point that relaxation can be done only in the case of SC & ST candidates with respect to the experience required i.e. of three years. It is for the respondents to consider the matter of relaxation of rules and is not open for the judicial review. Even on humanitarian grounds too, the relaxation with respect to educational qualification in favour of the applicants cannot be done though the applicants might have been working on casual basis and also since June, 1991 under an interim order passed by the Tribunal on 27.6.1991. The contention of the learned counsel that the applicants have worked for more than 206 days and that they have worked for years will not, itself, entitle them for appointment to the post unless they qualify and eligible for appointment to the post. In the case of Gr. 'D' employees the Ministry of DOP&T has issued O.M. from time to time in the year 1988 and recently in 1993 wherein the casual workers who have worked for more than a year i.e. 206 days for a 5 days week and for 240 days in case there is a six days week, then these casual workers can be granted

temporary status, as and when vacancy arises they can be considered for regularisation if they are otherwise eligible. The post of Fielder(MT) Driver is a group 'C' post and there is no instructions or O.M. on the point where on a group 'C' post if a person is allowed to work on casual basis then he has to be regularised unless he qualifies and has requisite essential educational qualification under the recruitment rules. The recruitment rules were notified in 1984 and the applicants were engaged on casual basis two years after coming into force of the recruitment rules i.e. in 1986. They cannot, therefore, bye-pass the recruitment rules. The terms and conditions of their engagement can be only in accordance with the rules and they cannot be regularised dehors the rules.

The learned counsel for the applicant also contended that the respondents have earlier condoned this educational qualification in some of the cases but neither in the original application nor in the rejoinder filed by the applicants, the applicants have given any such example where the respondents have regularised or given regular appointment to casual workers who do not possess the minimum educational qualification of matric or equivalent. A mere argument to that effect will not set an example as allegedly followed by the respondents.

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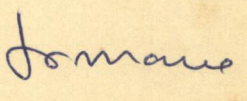
The learned counsel for the applicant has also referred to the authority of H.C. Rethaswamy Vs. State of Karnataka reported in 1991(1) ATJ P.31. In that case certain appointments were made by the Chief Justice of Karnataka High Court while the appointing authority is District Judge in consultation with the Public Service Commission. The appointments made by the Chief Justice were held to be irregular but the Hon'ble Supreme Court of India, in circumstances, directed that those appointees should be regularised. Those appointees did possess the requisite qualification with respect to education, for the post. Thus, the case in hand does not give any benefit to the case of the applicants and is distinguishable. Other case referred by the learned counsel for the applicant is of Azad Singh vs. Union of India decided by the Principal Bench by its order dated 25th October, 1991. In that case also there were certain casual workers who have worked for a number of years and it was directed by giving relaxation of age that they can be considered for regularisation on group 'D' post on the basis that they have worked for a number of years. Here the question is of lack of educational qualification in both the applicants. Here there are definite recruitment rules for appointment to the post. Thus, this authority also does not help the case of the applicants.

Since the applicants have been working with the respondents continuously now for about more than 8 or 9 years so in their case the respondents can take a lenient view and

as and when, within a period of two years, they obtain the necessary educational qualification then they can be considered after relaxing the age with regard to the number of years they have put in with the respondents on casual basis, till such time, if there is job requirement, the applicants may be retained in preference to freshers and other ad-hoc employees subject to the availability of vacancies on the post.

The application is, therefore, disposed of with the direction that the relief for regularisation cannot be granted to the applicants but they may be allowed to continue if there is job requirement and they work to the satisfaction to the respondents for a further period of two years and in the meantime ^{if} they obtain the requisite educational qualification of matric or equivalent, which is essential, then thereafter they can be considered for regularisation on the availability of vacancies along with others. With these observations, the application is disposed of with no order as to costs. The interim order passed earlier on 27.6.1991 is vacated and modified as observed above.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)