

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
A L L A H A B A D

O.A. No. 1101
I.A. No.

1987

DATE OF DECISION Jan., 1988

Vickiita Naseem Dule & others Petitioner

Sri Swaraj Prakash Advocate for the Petitioner(s)

Versus

U.O.I. & another Respondent

Sri Ashok M Shukla Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice S. Zahoor Hasan, V.C.

The Hon'ble Mr. Ajay Johri, A.M.

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 1101 of 1987

Vichitra Narain Dube & others Applicants.

Versus

Union of India & another Respondents.

Hon'ble S. Zaheer Hasan, V.C.
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

In this application received under Section 19 of the Administrative Tribunals Act XIII of 1985 the applicants, who are working as Casual Labour in the Head Record Office, RMS, Gorakhpur have come up against order dated 28.10.1987 passed by respondent no. 2 by which it has been laid down that after the vacancies in Group 'D' are filled up by E.D. employees, the balance of the vacancies, if any, will be filled by the casual labour.

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The applicants have prayed for setting aside the order dated 28.10.1987 and for issue of a direction for preparation of group 'D' Test category approved list for each year and the vacancies be filled yearwise in accordance with these lists and bringing forward the approved lists to 1987 for absorption upto the year 1987 otherwise E.D. employees will get preference.

2. The facts of the case are that on 10.3.1987 a notification was issued by the respondents about a test to be held for filling up group 'D' vacancies. The employees eligible were non-test category group 'D' employees, Extra Departmental Agents, Casual Labour and

Part Time Casual Labour, who fulfilled certain conditions. This notification was based on the Government Order of 29.8.1981 and March, 1983, which are placed as Annexures 'A-4' & 'A-5' to the application. These tests were to be held every year and those group 'D' Non-Test Category employees, who qualified were to be absorbed against the vacancies. Remaining vacancies were to be filled by other category staff. In October, 1987 another notification was issued on 28.10.1987 where the opportunity to appear in the test has been denied to the eligible Casual Labour. After April, 1982 no literacy test was held though the G.O. laid down that tests should be held every year. All the vacancies since 1982 have been brought forward and included for filling up by this test as per notification of 28.10.1987.

3. The respondents' case is that there was a complete ban on recruitment since 1984 and hence no test was held upto 1987. This ban was lifted on 11.7.1986. After lifting of the ban the test is being held to fill the vacancies. The recruitment is made from amongst :-

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- a) Non-Test Group 'D' Staff,
- b) Extra Departmental Agents,
- c) Casual Labours, &
- d) Nominees of Employment Exchange.

The recruitment from next category is made only when there is no qualifying person available in any of the higher categories. There are 31 vacancies upto 1985-86. 31 Extra Departmental Agents applied for the said post. Since recruitment has to be made first from the category of EDAs it was decided to hold examination from ^{amongst} them first. Any vacancies left over would be filled by holding supplementary examinations from amongst Casual Labours, who are under the third priority. The applicants have

come prematurely to the Tribunal. If they had any grievance they could approach higher authorities. Presently there is no non-test category group 'D' official to take the test and hence the test is confined to EDAs.

4. We have heard the learned counsel for the parties. The contentions raised by the learned counsel for the applicants was that there was no ban on the absorption of eligible casual labour. The ban only applied to direct recruitment and the E.D.Agents. Thus the non-holding of yearly suitability tests were incorrect and it denied the casual labour their rightful claim for absorption in those years. The submission made by the learned counsel for the respondents was that the ban was total and the left over vacancies after absorbing the suitable EDAs will be filled by the suitable casual labour. We have also perused the case file carefully.

5. On the subject of recruitment to group 'D' test category the various directives make it clear that the vacancies are to be filled from ^{or among} the eligible categories in the order of preference given. A Literacy test has to be held once a year and those who qualify in the test should be brought on the approved list which is to be to the extent of vacancies and persons from the list are to be appointed when test category vacancies become available. The recruitment from the next lower category in the list is to be made when no qualified person is available in the higher category. Thus there is no question of inviting applications from all the categories to make the approved list. The demand of the applicants that they should be called for the test which was arranged in March, 1987 along with EDAs is, therefore, not covered under the rules. We do not find anything wrong

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in the methodology adopted. The higher category must be exhausted before calling persons from the lower category.

6. From Annexure 'RA-I' it becomes evident that in March, 1984 a ban on creation of posts and filling up of existing posts by direct recruitment had been imposed. It is also clear that certain categories, e.g. physically handicapped persons, absorption of casuals in group 'D' and redeployment of surplus staff had been exempted from the ban. E.D.As were not excluded from the ban. In their averments and at the bar also it had been submitted that there was total ban on recruitment and filling up of vacancies upto 1986 when the ban was lifted under directives issued under Director General's letter No. 45/33/83/SPB-1, dated 11.7.1986. On the basis of this letter the Post Master General (PMG), U.P. Circle, desired that examination for group 'D' staff be held. The letter of 10.7.1986 placed as Annexure 'RA-II' to the rejoinder affidavit refers to the ban on the recruitment of EDAs against group 'D' posts and says that the EDAs are also exempted from the perview of the ban orders for recruitment against Postman's cadre vacancies and vacancies in group 'D' cadre against residual vacancies. There is no letter which imposed total ban. The conclusions arrived at by the respondents on which they filed their reply are thus not based on any orders. It was misinterpretation of the orders issued in February, 1986 imposing ban ^{and} ~~by~~ ^{by} ~~from the perview of the ban.~~ exempting certain categories. The letter of July, 1986 only added in the exemption list the EDAs. Thus from July, 1986 onwards the ban did not apply to Physically Handicapped persons, casual labours, surplus staff and EDAs. The ban was lifted in respect of EDAs. The averment made by the respondents that there was a total ban affecting all

categories is erroneous.

7. In the background that the ban did not apply to certain categories including the applicants, who are casual labours, ^{3/} for the decision by the respondents in not holding the literacy test each year after 1982 was wrong. It resulted in denial of opportunity to the eligible casual labours for getting absorbed against vacancies in group 'D' Test Categories that may have arisen each year upto July, 1986, if there was no eligible person available amongst the higher category of non-test group 'D' staff.

8. In our opinion ends of justice will be met if the respondents make out a list of all the eligible casual labours yearwise for the years when no test was held and also earmark the vacancies for each year by allotting the total vacancies of 31, for which they have held the test recently limiting it only EDAs, to the years in which they arose and then hold a literacy test and provide such casual labour who were eligible in a ^{available} particular year against vacancies for that year. ^{3/} They will follow the instructions for holding such tests and making the select list. They will also consider the category of non-test group 'D' staff, if any staff were available and were eligible in those years as the casual labours will have a claim only after the higher category of non-test group 'D' staff have been first provided. EDAs will be excluded for those years as they were not exempted from the ban. They will become eligible for being considered against vacancies for the years when they were also exempted from the ban. They cannot be considered for absorption against all the 31 vacancies that existed when the test was arranged after the lifting

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of the ban on EDAs. We direct accordingly. This exercise should be completed within four months from the issue of these orders.

9. The application is disposed of accordingly. Under the circumstances of the case we make no order as to costs.

REGISTERED
R. M.
Vice-Chairman.

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Member (A).

Dated: January 19, 1988.

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