

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 5TH DAY OF APRIL, 2002

Original Application No.1861 of 1994

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.C.S.CHADHA, MEMBER(A)

1. Akhilesh pandey, S/o Shri Vishwanath pandey
2. Bashisht Muni, s/o Sri gopal Das
3. Anil Kumar Singh, S/o Sri Raj bahadur Singh
4. Imtiaz Ahmad, S/o Sri Iqbal Ahmad
5. Bachaspati Tripathi, S/o Sri Koteshwar Prasad Tripathi.

6. Bhonu Lal, S/o Shri Gallar
7. Subhash Chandra Singh, S/o Shri hansraj singh
8. Virendra Bahadur Tripathi S/o Shri Jagdish Tripathi
9. Anil Kumar Shukla, Son of Shri Ram Murti Shukla
10. Rajendra Prasad Gupta, son of Shri Balgovind Gupta
11. Gyan prakash Chaturvedi, sonRs of Shri Rajdeo Chaturvedi.
12. Kashi Nath Kumhar, son of Shri bidesi Kumhar
13. Ram parvesh Pandey, son of Shjri Chandrika Pandey.
14. Ram kewal Singh, son of Sri Ram Pyarey Singh
15. Baleshwar Yadav, son of Shri Narain Yadav.
16. Smt. Chandra Mishraa, w/o Late Shri Kameshwar Pd.Mishra.

... Applicants

(By Adv: ShriSwaraj prakash)

Versus

1. Union of India through Ministry of Communication, New Delhi

2. Head Record Officer, Head Record Office, railway Main Services(RMS) Senior Superintendent, Railway Mail services(RMS) 'G'Division, gorakhpur, district Gorakhpur.

... Respondents

(By Adv: Ms. Sadhna Srivastava)

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O R D E R (Oral)

JUSTICE R.R.K. TRIVEDI, V.C.

By this OA u/s 19 of A.T. Act 1985 applicants have prayed for a direction restraining the respondents from filling up the vacancy of Group 'D' in pursuance of the letter dated 26.11.1994 (Annexure 1). The grievance of the applicants is that they are casual labourers serving in the Postal department with temporary status for the last several years. They were granted temporary status under the judgement of Hon'ble Supreme Court and the circular letter of the Ministry of Communication, Government of India dated 12.4.1991. They have also referred to certain paras of the aforesaid letter that they are entitled for regularisation as Group 'D' employees as provided in para 7. It is submitted that under para 7 and as per the Extant Rules only a preference could be given to the ED employees but by the impugned order direction has been given to fill up the vacancies only by appointing EDs and thus the claim of the applicants have been ignored.

Resisting the claim of the applicants counter reply has been filed alongwith the order of Chief Post Master General, UP Circle, lucknow has been filed which is of March 1993. The last paragraph of this letter is very material for the controversy in hand.

"I have been directed to inform you that the Chief PMG has desired that only the EDAs are to be promoted to Group 'D' cadre against the vacancies available in Division as per your letter referred above. In compliance to date of communication no.44-31/87-SPB-1 dated 28.8.1990 circulated under this office

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No. Rectt./R-33/Ch.III/1 dated 24.9.91 and the casual labourers who have already been granted temporary status are not needed to be posted against the vacancies of Group 'D' cadre."

Thus, under the aforesaid direction of Chief PMG the regularisation of the applicant who are casual labourers with temporary status has been denied. Learned counsel for the applicant has submitted that the direction amounts to reservation in favour of ED employees which is not the intention of the rules. The rules as well as the government order dated 12.4.1991 only mentioned above preference to be given. It is submitted that the preference can be exercised only when there are candidates who are equal on merits in all respects. It is submitted that the way Chief PMG stopped recruitment of the applicants is violative of Article 14 of the Constitution of India as it reserves the post for a particular class.

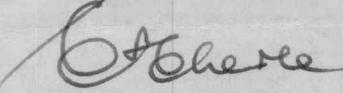
Ms. Sadhna Srivastava, on the other hand submitted that the order is justified as ED employees are more experienced than the casual labourers for discharging the duties as group 'D' employees in postal services.

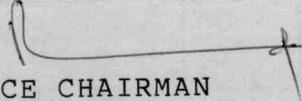
We have carefully considered the submissions of the counsel for the parties. Statement has also been made that applicants no.1,2,3,7,8,14 and 15 have already been regularised as group 'D' employees. Now only 9 of the applicants have been left to be considered. As already stated the order of the PMG as well as the impugned order directing that the vacancies of Group 'D' shall be filled only through EDAs does not appear to be correct and legal. EDAs are entitled only for a preference and as already stated above, preference can be exercised when

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the two candidates are equal on merits in all respects.

In the circumstances, in our opinion applicants are entitled for relief. The OA is accordingly disposed of finally with the direction to the respondent no.3 to understand and follow the impugned order dated 26.11.1994 in the light of the observations made above that EDAs are only entitled for preference and the applicants who are casual labourers with temporary status, shall not be totally excluded from being considered for appointment on regular basis as Group 'D' employees. The candidates from both the sources shall be considered in accordance with law as observed above against the vacancies available. No order as to costs.


MEMBER(A)


VICE CHAIRMAN

Dated: April 5, 2002

Uv/