

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(5)

O.A. No. 230 of 1989
T.A. No.

DATE OF DECISION 4th November 1992.

Shri Umesh N. Pandya Petitioner

Shri B. B. Gogia Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri Akil Kureshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan Vice Chairman.

The Hon'ble Mr. R.C. Bhatt Member (J)

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? ✗
4. Whether it needs to be circulated to other Benches of the Tribunal? ✗

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Umesh N. Pandya
Gundawadi Row No. 6
Becharaji Nivas,
Rajkot.

Applicant.

Advocate Shri B. B. Gogia

Versus

1. Union of India
Through Secretary
Department of Personnel &
Administration, New Delhi.

2. The Regional Provident Fund Commissioner
Gujarat State,
Bhavishyanidhi Bhavan
Near Income tax Circle,
Ashram Road,
Ahmedabad 380 014.

3. The Assistant Provident Fund Commissioner,
Sub-Divisional Office,
7/10 Bhaktinagar Station Plot
Rajkot 360 002.

Respondents.

Advocate Shri Akil Kureishi

JUDGEMENT

In

O.A. 230 of 80

Date : 4th. Nov. 1992.

Per ; Hon'ble Shri N.V. Krishnan Vice Chairman

Shri B.B. Gogia for the applicant.

Shri Akil Kureishi for the respondents.

The applicant was & employed as casual peon/parash-cum-Messenger in the office of Regional Provident Fund Commissioner at Rajkot, respondent no. 3, in 1981.

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He is aggrieved by the impunged order Annexure A-3 dated 31st March/3rd April 1989 of the second respondent, the Regional Provident Fund Commissioner. In pursuance of the directions given by this Tribunal in its order dated 3-1-1989 (Annexure A-2) the applicant was interviewed again and after considering all matters, respondents have not found him fit for the post of Farash-cum-Messengar. It is against this order (Annexure A-3) that this application has been filed for directions to the respondents to offer him regular appointment as Farash/Messenger or Peon in the Office of the second respondent at Rajkot or at any place, as per the rules, with all consequential benefits.

2. This grievance of the applicant has arisen in the following manner :

2.1 The applicant was working as a peon for about eight to nine months in 1981 under the respondent, when his services were dis-continued. He was again appointed as peon from March 1983 to 9-12-1983, from which last date, he was not engaged further, because fresh recruitment has taken place.

2.2 He filed Civil Suit No. 179 of 1984 in the Court of Civil Judge, Senior Division, Rajkot which, on the establishment of this Tribunal, was received on transfer and registered as T.A. 221/1987.

2.3. Thereafter, this T.A. was disposed of by the order dated 3-1-1989, Annexure A-2. It was observed

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that the petitioner had already been screened by the Departmental Promotion Committee on 16-2-1984 which had not found him fit. The Bench observed :-

"It is not clear whether his unfitness is on account of any educational deficiency or any other insuperable hurdle which may not have been removed with time". In these circumstances, the application was disposed of with the following directions.

"It is therefore fit in the circumstances of this case that the respondent authorities should examine whether the petitioner should be asked to face a screening test by the DPC according to the normal rules of appointment as the case may be, without having to go through the employment exchange and if there is any hurdle in doing so, to state the nature of it in the speaking order with reference to the circulars, relaxing the regularisation of persons serving for substantial periods without coming from the employment exchange. Such a speaking order be passed by an authorities not lower than Assistant Provident Fund Commissioner within a period of three months of the date of this order".

2.4 In pursuance of these directions the applicant was called for an interview on 27-3-1989 and the impugned order Annexure A-3 has been communicated to him. Hence this application.

3. The respondents have filed a reply refuting the contentions. It is stated that the applicant is not

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entitled to any relief. The respondents have referred to instructions (Annexure A-1) issued on 26-10-84 by ⁴ the Department of Personnel as to how the case of Casual labour should be handled. These instructions contained ~~ed~~ the following directions.

" Casual labourers recruited in an office/ establishment direct, without reference to the Employment exchange should not be considered for appointment to regular establishment unless they get themselves registered with the Employment Exchange, render, from the date of such registration a minimum of two years continuous service as casual labour and are subsequently sponsored by the Employment Exchange in accordance with their position in the register of the Exchange.

2. A casual labourer may be given the benefit of two years continuous service as casual labourer if he has put in at least 240 days of service as a casual labourer (including broken periods of service) during each of the two years of service referred to above.

(M.F. No. F (28)(2) -Est (s) 1/60, dated January 24, 1961 and M.H.A. O.M. NO. 5/52/60- Estt. (A) dated 16th February, 1961, No. 16/10/66-Estt. (D) dated 2nd December, 1956 & 14/1/68 Estt. (C) dated 12th February 1959).

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Casual labour in five day week offices : It has been decided by that in the organisations observing five day week, casual workers may be consider for regular appointment to Group D posts if otherwise eligible, if they have put in two years of service as casual workers with 205 days of service during each year as against the usual ~~max~~ 240 days.

(D.P. & A.R. O.M. No. 49014/19/84 - Estt. (C) dated the 26th October 1984)!!

It is therefore contended that the applicant was not entitled for regularisation.

4. The applicant has not rendered 240 days of continuous services in any year . He was considered by the earlier D.P.C in 16-2-1984 only because of the fact that there was directions to that effect by the Civil Court before whom he had filed a suit.

5. We have heard the learned Counsel for the ~~xx~~parties and perused the records. The learned counsel for the applicant submits that the respondents have not considered the applicants case in the spirit in which they were directed to do so by the Annexure A-2 order. It is contended that in view of his long casual services he is entitled to regularisation. The ^{burden} ~~burden~~ of the arguments of the learned counsel for the

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applicant is that the applicant is entitled to regularisation in Group 'D' post because of his earlier service from 7-2-1981. He has referred to some decisions of the Supreme Court in his application in support of the plea. He has also cited in support of his case the decision in 1990 (3) SLJ 408.

6. In the earlier litigation, the directions was to consider whether the applicant should be asked to face a screening test by the D.P.C. according to the normal rules of appointment as the case may be, without having to go through the employment exchange, and, if there was any hurdle in doing so, they were directed to issue speaking order.

7. The respondent, did not find any hurdle in interviewing the applicant, though not sponsored by the employment exchange. Therefore, there was no need for any speaking orders. The applicant was interviewed and the result was communicated to the applicant by the impugned Annexure A-3 order.

8. The impugned order, however, does not clarify the doubts entertained by the Bench on the last occasion viz., that it was not clear why the applicant was found to be unfit by the earlier DPC on 16-2-1984 and whether it was on account of any educational deficiency or any other insuperable ~~as~~ hurdle which may not have been removed by time.

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9. We therefore directed the respondent to produce the original records of the DPC ~~in~~ for our perusal. This has been produced. We see that in pursuance of the Annexure A-2 order of the Tribunal, a D.P.C presided by the second respondent met on 3-2-1989 and decided that a screening committee should screen the applicant at Rajkot and decided to have in that committee three persons chaired by the Officer in Charge of the Sub-Regional Office at Rajkot, and assisted by ~~the~~ one Shri M.D. Pandit, Provident Fund Officer, who was a member of the earlier D.P.C. Accordingly, this Screening Committee met on 27-3-1989 in which Shri M.D. Pandit was also present. Shri Pandit gave a letter to the Chairman of the Screening Committee as follows :

* With reference to the comments and opinion upon the decision taken by the earlier D.P.C met on 16-2-1984, I am to opine that the petitioner Shri Umeshchandra Narmadashanker Pandya was also screened under an order of the Hon'ble Court alongwith the other eight candidates sponsored by the Employment Exchange belonging to physically handicapped class Out of the nine, Shri Haresh Natwarlal Joshi, IXth Class passed, S.S.CQ failed in Mathes only whose date of birth is 6-7-1962 who could read, write and speak- Hindi English and Regional Language i.e. Gujarati was found more suitable and fit comparative-
ly and without prejudice to any candidate. The selection was fair and there is no point in disagree-
ing with the decision taken by the earlier D.P.C. as there was only one vacancy at that time."

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The Screening Committee, therefore, came to the conclusion that there was nothing wrong with the applicant but a better candidate was available last time who was selected in 1984. On receiving this report of the Screening Committee the D.P.C met again on 29-3-1989 and has endorsed the decision of the earlier D.P.C held on 16-2-1984 without making any change therein.

10. The proceedings of the D.P.C held on 16-2-1984 have also been placed for our perusal which contain the notes of the D.P.C members on the persons interviewed by them, including the applicant and Shri H.M. Joshi who was finally selected.

11. In our view, if these facts had been placed before the Bench on the earlier occasions, perhaps, the order might have been different.

12. Under these circumstances, we notice that the non-selection of applicant in 1984 cannot be faulted with.

13. The applicant is only a casual labourer with a relatively short service i.e. not even 240 days in any year, ^{even} ~~even~~ ^{if} ~~such~~ holidays are included, ~~such~~ a person cannot claim, as of right, to be regularised in any establishment. At ^{best} least he may be considered with others. This has been done.

14. The judgement cited by the learned counsel for the applicant has no application. The Supreme Court has always

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been insisting that even for ad-hoc appointments, the proper provisions should be followed. It has never been held that any one, arbitrarily picked up by an employer, ignoring the instructions that a panel should be called from the employment exchange or the vacancy should be advertised, should be regularised, only on the basis of length of service. The maximum concession given to such irregularly appointed adhoc employees is that they should be considered along with other rightful claimants, like those sponsored by the employment exchange. These principles have been reiterated and laid down in the judgement of the ~~Appeal~~^{Apex} Court in State of Haryana Vs. Pyara Singh 1992 (21) ATC 403. In the present case, the applicant was considered and a better candidate was selected. Hence the applicant cannot have any grouse.

15. In these circumstances we find no merit in this application and it is dismissed, without orders as to cost.


(R. C. Bhatt)

Member (J)

4th Nov. 1992.


(N. V. Krishnan)

Vice Chairman.

04 - 11- 1992.