

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 524/89, 44/90, 361/90, 263/90, 48/91
PPX NO. 373/92, 132/92, 421/94, 552/94, 272/95

DATE OF DECISION 13-10-97

Mr. S.K. Chavda & Ors.

Petitioner s

Mr. P.H. Pathak, Mr. Girish Patel, Advocate for the Petitioner [s]
Versus

Union of India & Ors.

Respondent s

Mr. Akil Kureshi

Advocate for the Respondent [s]

Mr. K.C. Bhatt for R-7 (in O.A. 44/90)

CORAM

The Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

The Hon'ble Mr. T.N. Bhat, Judicial Member.

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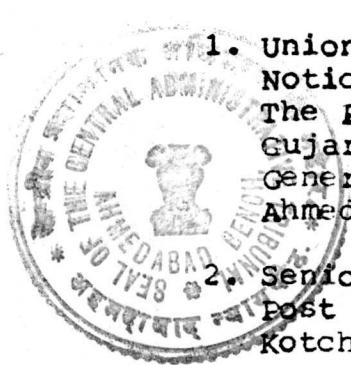
O.A.No. 524 OF 1989

1. K.R. Chavda
2. All India Postal Employees Union Postman & Class IV & EDAs through its Circle Secretary Shri H.F. Qureshi both addressed to: Bechar Ghanchi's Chawl Opp. Beharam Pura Post Office Ahmedabad.

.... Applicants

(Advocate: Mr. P.H. Pathak)

Versus



1. Union of India
Notice to be served through
The Post Master General,
Gujarat Circle,
General Post Office,
Ahmedabad.
2. Senior Superintendent of
Post Office,
Kotchha Division, Bhuj.
3. Senior Superintendent of
Post Office,
City Division, Ahmedabad.

.... Respondents

(Advocate: Mr. Akil Kureshi)

O.A.No. 44 OF 1990

1. Shri D.N. Parmar
2. All India Postal Employees Union Postman & Class IV & E.D.As, through its Circle Secretary Shri H.K. Qureshi, both addressed to: Bechar Ghanchi's Chawl, Opp: Behrampura Post Office, Ahmedabad.

.... Applicants

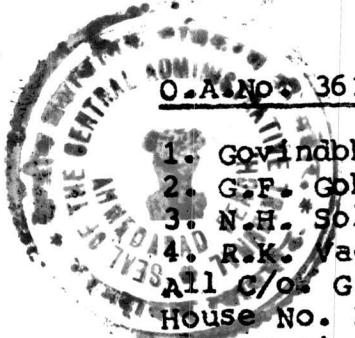
(Advocate: Mr. P.H. Pathak)

Versus.

1. Union of India
Notice to be served through
The Postmaster General
Gujarat Circle
General Post Office,
Ahmedabad.

2. The Supdt. of Post Offices,
Amreli Division, Amreli.
3. The Supdt. of Post Offices,
Ahmedabad City Division
General Post Office, Ahmedabad.
4. The Supdt. of Post Offices,
Bhavnagar Division, Bhavnagar.
5. The Supdt. of Post Offices,
Porbandar Division, Porbandar.
6. The Chief Postmaster
General Post Office,
Ahmedabad.
7. National Union of Extra-Departmental
Agents, Gujarat Circle,
through its Circle Secretary
Shri C.D. Parmar, address
Kamalpura Post Office,
Palanpur and others. Respondents

(Advocate: Mr. Akil Kureshi for R-1 to R-6
and Mr. K.C. Bhatt for R-7)



O.A.No. 361 OF 1990.

1. Govindbhai G. Prajapati
2. G.F. Gohil
3. N.H. Solanki
4. R.K. Vaghela
All C/o G.F. Gohil
House No. 2720, Dariapur
Rupa Pari, Ahmedabad. Applicants.

(Advocate: Mr. P.H. Pathak)

versus

1. Union of India
Notice to be served through
The postmaster General
Gujarat Circle,
Navrangpura, Ahmedabad.
2. Sr. Supdt. of Post Office
General Post Office,
Ahmedabad. Respondents

(Advocate: Mr. Akil Kureshi)

O.A.No. 263 OF 1990

Ajmalbhai Sartanbhai Ghoghal
E/211 Jogeshwari Park,
Amraiwadi,
Ahmedabad - 26.

..... Applicant.

(Advocate: Mr. P.H. Pathak)

versus

1. Union of India

Notice to be served through
The Chief Post Master General
Navrangpura, Ahmedabad - 7.

2. Post Master

Amraiwadi Post Office,
Amraiwadi, Ahmedabad.

..... Respondents.

(Advocate: Mr. Akil Kureshi)

O.A.No. 48 OF 1991

1. Amratkumar A. Parmar
2. All India Postal Employees Union
Postman & Class IV & EDAS
through its Circle Secretary
Shri H.F. Qureshi
both addressed to:
Bechar Chanchi's Chawl
Opp: Behrampura Post Office
Ahmedabad.

..... Applicants

(Advocate: Mr. P.H. Pathak)

versus

1. Union of India

Notice to be served through
The Chief Postmaster General
Gujarat Circle, G.P.O., Ahmedabad.

2. Chief Postmaster,
G.P.O., Ahmedabad.

3. Sr. Supdnt. of Post Offices
Kheda Division, Anand.

4. Sr. Supdnt. of Post Offices
G.P.O., City Division,
Ahmedabad.

..... Respondents

(Advocate: Mr. Akil Kureshi)

O.A.No.373 OF 1992

1. National Union of postal employees
postman Group - D (Gujarat Circle)
through its Circle Secretary,
Shri C.P. Nayee,
Navrangpura Head Office,
Ahmedabad.
2. Mr. Vinuprasad Chandulal Pandit
Addressed at village Ajolik,
Taluka Vijapur,
District: Mehsana.

..... Applicants.

(Advocate: Mr. G.M. Joshi)

versus

1. Union of India
Notice to be served through
Chief Postmaster General
Gujarat Circle,
Nr. Akashvani,
Ashram Road, Ahmedabad.
2. The Chief Postmaster,
General Post Office
Ahmedabad.

..... Respondents

(Advocate: Mr. Akil Kureshi)

O.A.No. 132 OF 1992

P.T. Parmar
C/o. H.F. Qureshi
Opp: Behrampura P.O.
Behrampura, Ahmedabad.

..... Applicant

(Advocate: Mr. P.H. Pathak)

versus.

1. Union of India
Notice to be served through
The Chief Postmaster General
Navrangpura, Ahmedabad.7.
2. Post Master
Amraiwadi Post Office
Amraiwadi, Ahmedabad-26.

..... Respondents

(Advocate: Mr. Akil Kureshi)

O.A. 421 OF 1994

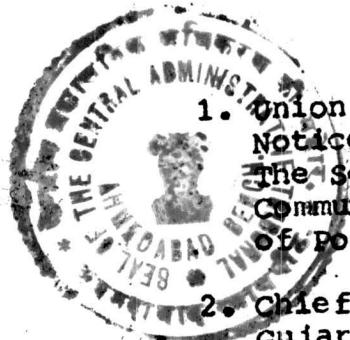
1. Makwana Mahesh Bababhai
1320/62, Trikamlalni
Chali No.1, Opp: Vora's
Roza, Saraspur, Ahmedabad-18.
2. Parmar Chamanbhai Revabhai
366, Indira Garibnagar,
Nava Bapunagar,
Opp. Bapunagar Police Station
Ahmedabad - 24.
3. Chamar Jayantibhai Dhanabhai
10/478, 'C' Colony,
Opp: Ashok Mila,
Naroda Road, Ahmedabad-25.
4. Rathod Kedarbhai Somabhai
Khodiyarnagar-ni Chali
Behind Sharda High School,
Asarwa, Kalapinagar,
Ahmedabad - 16.
5. Chauhan Bhikhabhai Valabhai
43, Rohit Park Society,
Opp. Kishannagar,
Dani Limda, Ahmedabad-28.
6. Parmar Bipinbhai Alajibhai
49, Purani Housing Society
Gita Mandir Road,
Ahmedabad - 22.
7. Solanki Pravinkumar Becharbhai,
6/70, Krishna Apartments,
Bapunagar, Ahmedabad - 24.
8. Leuva Jagadishbhai somabhai
30, P.Kastia Chawal
Rajpur Gomtipur
Ahmedabad - 21.
9. Solanki Pravinkumar Motilal
23/508, C. Colony,
Naroda Road, Ahmedabad - 25.
10. Rathod Maganbhai Laghubhai
28/87, Sheth Kothawala Vorani
Chali, Rajpur Gomtipur
Opp. D-30, Ahmedabad - 21.
11. Solanki Rameshchandra Devjibhai
103/5, Shekhumiyani Chawali
Outside Raipur Darwaja
Near Mahavir Market,
Ahmedabad - 22.

12. Parmar Laxmanbhai Joitaram
Rajpur Gomtipur, Popatiawad,
Gulam Husain's Chawali,
Ahmedabad - 21.
13. Parmar Vithalbhai Manabhai
212/1, Dr. Ambedkar Chowk
Near Futi Masjid, Dariapur
Ahmedabad - 1.
14. Parmar Manubhai Ramjibhai,
Anaj Godown's Chhapra
Near Home Guards' Ground
Camp Road, Cantonment,
Ahmedabad - 3.
15. Parmar Kishorkumar Bhikhabhai
Mansuri Chawal No.2,
Opp. Mariambibi's Masjid
Rajpur Gomtipur
Ahmedabad - 21.

.... Applicants

(Advocate: Mr. Girish Patel)

versus



1. Union of India,
Notice to be served through
The Secretary, Ministry of
Communications, Department
of Posts, Dak Bhawan, New Delhi-1.
2. Chief Postmaster General
Gujarat Circle, Khanpur,
Ahmedabad - 1.
3. Senior Supdt. of Post Offices,
Ahmedabad City Division
Ahmedabad - 1.

.... Respondents

(Advocate: Mr. Akil Kureshi)

O.A.No. 552 OF 1994

1. Nelson Shantilal Christian
2. D.B. Chaudhri
Both address to:
10/B Saron Park
Hadkeshwar Last Bus Stop
B/H Dhiraj Housing Board,
Maninagar, Ahmedabad - 1.

.... Applicants.

(Advocate: Mr. P.H. Pathak)

versus

1. Union of India,
Notice to be served through
The Chief postmaster General
Gujarat Circle, Khanpur, Ahmedabad-1.

2. Postmaster
Navrangpura Post Office
Navrangpura,
Ahmedabad - 9.

(Advocate: Mr. Akil Kureshi)

O.A.No. 272 OF 1995

Mahendrabhai Mafatlal Solanki
134/78, Trikamlalni Chawl
Near Hemraj School, Paldi,
Ahmedabad - 7.

..... Applicant

(Advocate: Mr. Girish Patel)

versus



1. Union of India
Notice through the Secretary
Ministry of Communications,
Department of Posts,
Dak Bhawan, New Delhi-1.

2. Chief postmaster General
Gujarat Circle,
Khanpur,
Ahmedabad - 1.

3. Senior Supdt. of Post
Offices, Ahmedabad City
Division, Ahmedabad - 1.

4. Sub Postmaster,
Maninagar Post Office,
Ahmedabad - 8.

.... Respondents

(Advocate: Mr. Akil Kureshi)

COMMON JUDGMENT

O.A.No. 524 OF 1989
O.A.No. 44 OF 1990
O.A.No. 361 OF 1990
O.A.No. 263 OF 1990
O.A.No. 48 OF 1991
O.A.No. 373 OF 1992
O.A.No. 132 OF 1992
O.A.No. 421 OF 1994
O.A.No. 552 OF 1994
O.A.No. 272 OF 1995

per: Hon'ble Mr. V. Ramakrishnan, Vice Chairman.

As the issues involved and the main relief sought for in all the O.A.s (namely regularisation as employees of the postal Department) are the same, all the O.A.s are disposed of by a common order.

2. The applicants in all these O.A.s were engaged on daily wages basis as outsider Postman and outsider Group D employees in Gujarat Circle. The All India Postal Employees Union Postman & Class IV & EDAs, National Union of Postal Employees Postman Group D (Gujarat circle) through their Circle Secretary besides a number of individuals had filed the application on their behalf. Many of them had performed the duties of Postman while a number of them were engaged as Group D. The respondents state that they were appointed against leave vacancies accumulated or to clear the work (as is seen from the reply statement in O.A.421/94). It is contended that the applicants in O.A.421/94 & O.A.272/95 were engaged after following some procedure after their names were sponsored by the Employment Exchange and they also possess the requisite qualification. This does not seem to be the case in respect of some of the others as in O.A.524/89 & O.A.44/90. After some time their services were sought to be terminated. The applicants in O.A.524/89 had initially approached the Gujarat High Court which granted the stay against their termination which was continued by the

Tribunal by its order dated 8.12.89. In O.A.44/90 the Tribunal had restrained the Department from filling up the vacant posts available in the cadre of Postman but subsequently permitted the respondents to fill up such post on a provisional basis subject to the outcome of the application and subject to certain other conditions including the stipulation that the appointment of selected candidate should not result in disengagement of the persons listed in Annexure A to that O.A. This was ordered to be followed mutatis mutandis in O.A.524/89.

The applicants submit that all of them should be given regular employment in the postal department as they had been working for long in that Department. The respondents, however, contend that they were appointed only against leave vacancies and for clearing accumulated work and so on and they were not working continuously and there are no posts to accommodate them.

When some of these O.A.s (such as O.A.44/90 & O.A. 524/89) were taken up for hearing on 31.7.92 the Tribunal noted that the Department had requested for additional time to work out a modus vivendi which might satisfy all the interest. A draft scheme was prepared by the local officers and was sent to the Headquarters for consideration and formal approval. Such a scheme has not yet been finally approved.

3. It is useful at this stage to indicate the staff pattern and the Recruitment Rules for the category of Postman. There is a regular cadre of Postman consisting of persons who are appointed on regular basis and whose work is full time, there is also a cadre of Extra

Departmental Agents (E.D.As) governed by separate rules who are employees having specific duties of not exceeding five hours a day and whose services are part-time and who are paid lower remuneration as compared to regular employees. The E.D.As are generally in position in rural areas where the work does not justify engagement of full time employees. The present applicants fall in neither category as they had neither been regularly recruited to the cadre nor have they been engaged as Extra Departmental Agents. There are recruitment rules for the cadre of regular Postman. The earlier rules of 1969 were amended in 1989 by rules for the Department of Post, (Postman, Village Postman and Mail Guards) Recruitment Rules 1989. The method of recruitment is laid down in column 11 in Schedule which reads as follows:

"Col.11 - Method of recruitment -

- (1) 50% by promotion failing which by ED Agents on the basis of their merit in the Departmental Examinations.
- (2) 50% by ED Agents of the recruiting Division or unit in the following manner, namely:-
 - (i) 25% from among ED Agents on the basis of their seniority in service and subject to their passing the Departmental examination, failing which by ED Agents on the basis of merit in the Departmental examination.
 - (ii) 25% from amongst ED Agents on the basis of their merit in the Departmental examination.
- (3) If the vacancies remained unfilled by EDAs of the recruiting Division, such vacancies may be filled by the EDAs of the Postal

Division failing in the zone of Regional Directors.

(4) If the vacancies unfilled by EDAs remain unfilled by the EDAs of the recruiting units, such vacancies may be filled by EDAs of the postal Divisions located at the same station. Vacancies remaining unfilled will be thrown open to EDAs in the Region.

(5) Any vacancy remaining unfilled may be filled up by direct recruitment through the nominees of the Employment Exchange*.

It is clear from this that apart from 50% by promotion reserved for Group D category, the remaining 50% is expected to be filled up almost exclusively by EDAs either on the basis of seniority or on the basis of merit in the Departmental examination and unfilled vacancies of the recruitment division may be filled up by EDAs of other divisions falling in the zone of Regional Directors. Only when all these measures do not result in filling up the vacancies, the same may be thrown open for direct recruitment through the nominees of the Employment Exchange. Such a contingency will be rare. The present applicants are neither Group D employees nor ED Agents and in the normal course and unless the rules are relaxed, they will stand little chance of being recruited as Postman. In fact in O.A.44/90, the National Union of Extra Departmental Agents, Gujarat Circle has joined as respondent No.7 and the private respondents had been agitating for vacating the stay granted by the Tribunal and which has been referred to earlier. It is seen from the recruitment rules that the Central Government can



relaxed any of the provisions of the rules if it is of the opinion that it is necessary to do so and after recording reasons in writing but such relaxation can be resorted to for any class or category of persons and not for individuals.

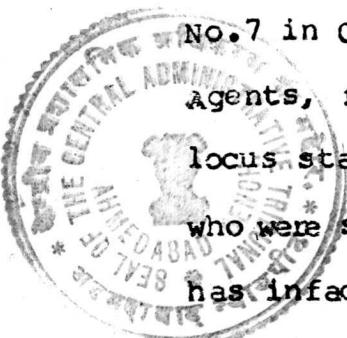
4. We have heard Mr. Pathak who represents the applicants in O.A.524/89, O.A.44/90, O.A.263/90, O.A.361/90, O.A.132/92, O.A.552/94 (along with Mr. G.M. Joshi in O.A.373/92), Mr. Girish Patel, who represents the applicants in O.A.421/94 and O.A.272/95, Mr.K.C. Bhatt, who appears for the respondent No.7 (National Union of Extra Departmental Agents, Gujarat Circle) in O.A. 44/90 besides Mr. Akil Kureshi, the learned Standing Counsel for the respondents.

5. Mr. Pathak says that the applicants have a legal right for regularisation. He refers to the observations of the Hon'ble Supreme Court which had directed the P&T Department to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who had been working in the P & T for more than one year. The Supreme Court had held that non-regularisation of temporary employees or casual labourer for a long period is not a wise policy. He submits that the failure of the Department to do so amounts to unfair labour practice. He does not agree that these persons were recruited only against leave vacancies or as a stop-gap measure. He contends that the work of the Postal Department had increased manifold owing to increase in the population but the Department had not been creating posts to provide for the increased

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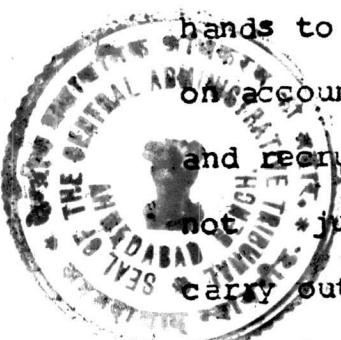
work-load. He cites as an illustration the fact that the population in certain areas in Ahmedabad city which was expected to be covered by one Postman earlier has increased enormously on account of the construction of multistoried buildings calling for engagement of more postmen. Mr. Pathak states that the applicants had been performing the duties of regular employees for a long period and have acquired a right to be regularised. He also refers to the scheme for regularisation of the casual employees in postal Department which took effect from 29.11.1989.

As regards the claim of the private respondent No.7 in O.A.44/90, National Union of Extra Departmental Agents, for vacating the stay he submits that it has no locus standi as it is not a recognized Union and ED Agents who were selected earlier have been absorbed and none has in fact been adversely affected by the grant of stay by the Tribunal.



6. Mr. Girish Patel brings out that the applicants whom he represents had been given work by the Department after following due procedure. They were sponsored by the Employment Exchange and they fulfilled the educational qualification laid down for the category of postman. They also belong to the Scheduled Caste Community. Most of these applicants joined the Department in the month of April 1991 while one had joined as early as 1988. They are not back door entrants. They had been engaged by the Department for a number of years but have been denied opportunity to appear in the examination held for recruitment as regular postman. He also submits

that permitting the applicants in O.A.524/89 and O.A.44/90 who were engaged without following any prescribed procedure for appearing in the test for Postman while denying the same to those who were sponsored by the Employment Exchange ~~and to possess~~ the requisite educational qualification is discriminatory. Mr. Girish Patel submits that the problem has arisen because of the defective man-power planning followed by the Department. ^{In} the Postal Department at any particular time, a number of regular employees ~~who~~ would be on leave but the Department had not provided adequate leave reserve in the cadre strength. It has also not taken steps to recruit additional hands to keep up with the increase in the work-load on account of ban for creation of additional posts and recruitment. The applicants have been recruited ~~not~~ just to meet any emergency situation or to carry out duties which are seasonal nor they have been engaged for a particular project which on completion will make a number of workers redundant. The applicants have been engaged for normal and regular work of the Department. Mr. Patel submits that just as the applicants need a regular job, the Department also needs the services of these workers for carrying on its day to day activities and as such there is a mutual dependence. They have also been asked to report every day for duty and if a person in the panel for substitute workers does not do so, he is not considered for fresh engagement. In view of this requirement to report for duties every day the applicants could not



make serious efforts for getting alternative work and in any case they accepted this condition in view of the acute unemployment situation. Mr. Patel states that in the circumstances denying job to the applicants by the Postal Department would be inequitable and the action of the Department in not giving work at all or only for a few days in a month in respect of applicants in O.A.424 of 1994 is unjust. He relies on the decision of the Hon'ble Supreme Court in the case of Jagmohan Meena, 1990(1) Supp. SCC p.113. In para 13, the Apex Court has observed that where the substitute had been working for long period continuously, their claims should be appropriately considered by the Department. He also refers to the decision of the Supreme Court in the case of Union of India v/s. K.N. Shivadasan & Ors. 1997(7) SC 65.

under

Mr. Girish Patel agrees that the relevant Recruitment Rules for Postman the applicants cannot in the normal course compete for the Postman examination. He however draws attention to the provisions for relaxation of the rules and states that the matter should be viewed in proper prospective. He submits that in view of the man-power requirement, the Department had engaged persons to meet the leave vacancies and also to cope with the increased work load. In such a situation engagement of new persons after throwing out the applicants who were working for long periods would go counter to the rights to equality in public employment and right to livelihood enshrined

in Articles 14, 16 & 21 of the Constitution. He submits that a solution can be found if the Department makes a one time relaxation of recruitment rules to provide for regularisation of employees who had been sponsored by the Employment Exchange and who are educationally qualified and had worked on adhoc basis for a number of years. It is also possible for the willing personnel to be absorbed in Group D category or to be appointed as Extra Departmental Agents. Mr. Patel forcefully submits that the Supreme Court had clearly deprec-ated the practice of continuing persons on adhoc or casual basis for long periods without making efforts at regularisation.

For these reasons he states that the Department should formulate and implement a rational scheme which will meet the legitimate interests of persons who had been working as substitute postman for long periods particularly when they are in need of additional man-power.

7. Mr. K.C. Bhatt for private respondent No.7 in O.A.44/90 submits that the Extra Departmental Agents have a legal right for being considered for 50% quota for Postman either on the basis of seniority or as per their merit in the departmental examination. The grant of stay by the Tribunal has adversely affected their interest as the posts held by the outsiders such as the applicants' right fully belong to them. He also states that a number of applicants do not have the requisite educational qualification prescribed for the

category of Postman. He contends that these are 40 Extra Departmental Agents who are qualified in the Postal Examination who can not be accommodated in the recruiting division but could have been considered for appointment in other divisions within the same region. In view of the stay granted by the Tribunal, some posts are held by ineligible persons and qualified Extra Departmental Agents are denied their right for appointment to such posts. Mr. K.C. Bhatt also states that the applicants in some O.A. had substantially relied on the provisions of the Industrial Dispute Act. The Supreme Court has since held that the Postal Department is not an industry and the Industrial Dispute Act is not applicable to them. He argues that the applicants are not eligible for appointment as Postman. He also does not agree with the submission of Mr. Pathak that the private respondents in O.A.44/90 have no locus standi and submits that as the Extra Departmental Agents are affected and as they get preference in the contest of a right the Recruitment Rules they have to put forth their case.

8. Mr. Kureshi, the learned Standing Counsel submits that the Department at the circle level had formulated a draft scheme to look after the interests of all concerned as has been brought out in the Tribunal's order dated 31.7.1992 in O.A.44/90. Mr. Kureshi makes available a copy of the draft rules. He also shows the same to Mr. Pathak for the applicants. Mr. Pathak suggests some modifications. Mr. Kureshi, however says that this scheme could not be finalised because there has been objection from the Extra Departmental Agents who

contended that any attempt to accommodate the applicants would be against the recruitment rules and also encroach into the opportunities available to the Extra Departmental Agents. The Department has not been able to proceed further in view of such objections.

9. We have bestowed our careful consideration to the submissions of all the parties.

It would seem that the problem has arisen mainly on account of inadequate manpower planning in the department. The Postal department is labour intensive and employs a large number of personnel. In such a big organisation, there are bound to be some who would be on leave or absent at any particular time. We are informed that adequate leave reserve has not been provided in the cadre strength to meet the problem of shortage when persons go on leave. The imposition of ban on creation of additional posts and recruitment seems to have added to the department's difficulties.

With the increase in population and the general development in the various fields, the role of Postal department has become quite significant. The increased workload has to be met through the additional staff besides improving the productivity of the existing staff. In the context of the ban on creation of additional posts, the department seems to have resorted to the practice of employing outsiders to meet the increased work load without following the laid down recruitment process. Initially they seem to have engaged people without following any procedure. A

number of persons who are parties to the OA/524 of 1989, OA/44 of 1990 seems to fall in this category, as their names were not sponsored by the employment exchange and in some cases, they do not possess the minimum educational qualification laid down for the posts. We find from the pleadings in OA 421/1994 that subsequently the department had engaged people whose names were sponsored by the Employment Exchange and who fulfilled the minimum educational qualification requirement. In the absence of posts, the applicants are working as outsider Postman and the Department has not made efforts to absorb them on a regular basis. It is contended that in many cases they have not been given any appointment letter.

The practice of engaging persons on casual or ad hoc basis without filling up the posts in a regular manner is not a recent development in the department. We find that the then Post & Telegraph Board had appointed a Study Group in 1965 to examine the problem of casual labour in the department which was nearly twenty to twenty-five thousand during that period, some of whom had been engaged for more than a year. Certain benefits were given to such casual labour in 1966 and they were allowed age relaxation. Some orders were issued in 1970s and 1980s in respect of such categories. There are Government instructions that persons on daily wages should not be recruited for work which is of regular nature but in practice, these instructions were not adhered to. A writ petition was filed by the National Federation of P. & T. employees and Hon'ble Supreme

Court while disposing it off on 27.10.87 give certain directions, particularly to pay wages to the persons employed as casual labourer at the rates calculated at the minimum pay in the pay scales of the regular employees. There was also a direction to the respondents to prepare a scheme on a notional basis for absorbing as far as possible casual labourers continuously working for more than one year in the P & T department. The department had prepared a scheme communicated in April 1991 which took effect from 29.11.1989. Some of the salient features of the scheme are that temporary status would be conferred on the casual labourers in employment as on 29.11.89 and who continue to be employed on this basis when the orders were issued and have rendered continuous service of one year (i.e. if they have been engaged for a period of 240 days in a year). Apart from giving them certain benefits in the matter of pay, increment, leave etc. it also provided that they could be appointed on regular basis by allowing age relaxation to the extent of service rendered by them as casual labourers ~~are~~ but no time limit was fixed for completing the process. The scheme also provided that appointment of Group D vacancies would be done as per the extent Recruitment Rules which stipulate preference to eligible E.D.A. employees. There was another provision in the scheme which barred recruitment from the open market for Group D posts except compassionate appointments so long as the casual labourers with requisite qualification

(24)

are available to fill up the posts in question. The scheme does not apply for recruitment to the category of Postman. Such of the applicants who are eligible in terms of this scheme for appointment to Group D posts and who do not expect to become postman could be considered for the benefit under this scheme where it has not already been extended.

We also find that the Ministry of Personnel had issued an O.M. on 16.7.90 (Enclosed as R-3) to the reply statement of the respondents in OA/421/94) relaxing the age limit for certain types of casual employees who were engaged to do clerical work or Stenographic work on daily wage basis in various

Central Government Departments. As per this letter, such of those who are educationally qualified for the posts were allowed to compete with outsiders for direct recruitment against Group 'C' posts and age relaxation was given to them to the extent of period of service rendered as casual labourer in a Government department. They were to take the examination conducted by the Staff Selection Commission. When they compete for the posts of L.D.Cs and Stenographers. In respect of other Group 'C' posts for which the recruitment is not done on centralised basis, they had to compete successfully in an examination and the selection test prescribed for the post. This was given as a one time relaxation and was applicable only to the next examination after issue of this circular.

As in a number of cases, the Tribunal had stayed the termination of the services of the applicants,

the department had acted on the analogy or the relaxation given by the Ministry of Personnel by their letter dated 16.7.90 referred to earlier.

We find from Annexure R-4 in OA/421/94 that one time relaxation for absorption in Group 'C' cadre was given. This is contained in the letter dated 1st Novr. 1993 from the Assistant Director General, Department of Posts addressed to the Chief Post Master General, Gujarat Circle which reads as follows:-

" Subject:- Grant of one time relaxation to casual workers for absorption in Group 'C' cadre.

Sir,

I am directed to refer to your letter No. R & E-2/15/CL/Exam/P'MAN/91-I dated 11.5.93 and to say that the matter has been considered. The substitutes in postman cadre may be allowed one more chance to appear in postman examination against the unfilled vacancies of EDAs apart from the one time relaxation offered earlier. If they don't pass in the examination or do not appear in the examination they are not to be retrenched but continued to be engaged as before, if they had worked for more than one year as substitute.

Yours faithfully,

Sd/- A.K.KAUSHAL
Asstt. Director General (SPN)"

We also find from the reply statement in the O.A. that this has been done in cases of the applicants in OA/524/89 and OA/44/p 90 who were working since 1989. Para 9.13 of the reply statement dated 27.7.94 in OA/421/94 reads as under:-

"9.13: In reply to para 6(13) of the application I say that the respondents admit that some of the

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outsiders have filed O.A. /524/1989 and 44/1990 before this Honourable Tribunal for regularising their services and not to terminate their services. This Honourable Tribunal has granted stay not to terminate their services. It is not correct that the said outsiders have been given appointment by back door entry. It is true that on account of the stay granted by this Honourable Tribunal they are continuously engaged in services. It is also true that they were allowed one more chance to appear in the postmen examination as per the criteria prescribed by the D.G. Post (copy at Annexure 3 hereto) against the unfilled vacancies of E.D. Agents apart from one time relaxation offered earlier on 14.6.1992 as per the directive from the Respondent No.1 and 2 (copy at Annexure R-4 hereto). I say that in all 72 persons who have obtained stay from this Honourable CAT have applied for appearing in the examination but only 51 were allowed as per their eligibility. Out of 51 appeared only 30 outsiders were declared successful candidates for their appointment as Postmen. Eight candidates only already appointed with effect from 2.7.1994 and rest 22 candidates are to be appointed. It is submitted that continuous engagement of those persons in preference to the present applicants is in order and it is as per the directives of this Honourable Tribunal. The applicants of O.A./524/1989 and 44/1990 are working prior to 1989, whereas the present applicants are working since April 1991. Thus the question of preference to the present

applicants ~~for~~ continuous engagement against the applicants in O.A. /524/1989 and 44/1990 does not arise".

It would seem from the above that the department has taken this decision only in the case of some outsiders particularly those who were applicants in OA/524/1989 and 44/90 in whose cases the Tribunal had stayed their termination from service. This order is dated 1st November 1993 (i.e) much after the Recruitment Rule for Postmen were amended in 1989. It is not quite clear as to why the benefits of this circular were not extended to applicants in OA/421/94 who were also engaged as outsider Postman and whose names were sponsored by the employment exchange and who fulfilled the educational qualification and who also belonged to the Scheduled Caste Category. The power to relax ~~any~~ provision of Recruitment Rules as per Rule 5 has to be exercised after recording their reasons in writing with respect of any class or category of persons and not to individuals.



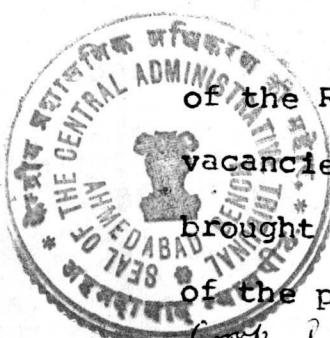
It would be clear from the foregoing discussion that the problem has been allowed to assume major ~~part~~ proportions. It is presumed that the department is working on finding a long term solution to the problem.

10. So far as the present applicants are concerned, one of the main grounds in support of many of these O.A.s is that the department has not followed the requirements laid down in the Industrial Disputes

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Act (I.A. Act) and one of the reliefs sought for in OA/524/89, 44/90, 361/90, 48/91 etc. is for a declaration that the respondents have no right to terminate the services of the employees without following the mandatory provisions of the I.D. Act. Hon'ble Supreme Court has held that the Postal Department is not an industry and as such ~~Exx~~ I.D. Act is not applicable to it and the officials working in that department are not workmen under the I.D. Act. In view of this position, the applicants do not require any legal right based on provisions of the I.D. Act for getting absorbed. It is not necessary to examine whether the requirements of the I.D. Act have been followed or not.

We have to take note of the provisions of the Recruitment Rules for filling up vacancies at the level of Postman. As has been brought out earlier, these rules provide that 50% of the posts shall be filled up by promotion from Grade IV staff failing which by E.D. Agents on the basis of the merit in the departmental examination. The remaining 50% is expected to be filled up mostly through E.D. Agents on the basis of the seniority or on the basis of their merit in the departmental examination. Only when the E.D. Agents are not available, the remaining vacancies of the employment exchange may be filled up by direct recruitment through nominees of the employment exchange. In practice, the scope for direct recruitment in terms of



the Recruitment Rules of candidates from the open market is very limited. We are informed that the Recruitment Rules were amended in 1989, after discussions with the staff side, in the Joint Consultative Machinery. In the normal course, therefore the persons who are parties in the present applications will have very little chance of getting absorbed as Postman on a regular basis as per the Rules even though many of them had been discharging the functions of the Postman for a number of years.

11. The Tribunal was informed on 31st July '92 in O.A./44/90 that a scheme was being drafted which might satisfy all the interests but the scheme was to be considered by the competent authority. This has been done presumably keeping in view the provisions of Rule 5 of the Recruitment Rules which empowers the Central Government to relax the Recruitment Rules for reasons to be recorded in writing where it is of the opinion that it is necessary or expedient to do so with respect of any class or category of persons.

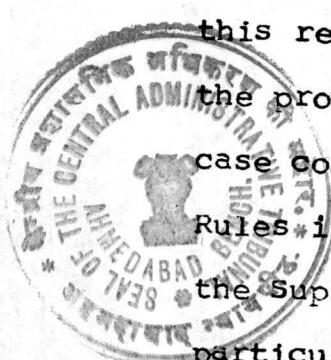
We are told that the local administration has forwarded a draft scheme to the department of Post. Some objections have been raised by the E.D.As to the draft scheme. M

Mr. Kureshi informs that when the draft scheme was being considered by the department, certain objection have been raised by the Extra Departmental Agents (EDAs) contending that it encroches on their right as the recruitment rules envisaged filling up of category of postmen 50% by promotion of Group D

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failing which by E.D. Agents on the basis of their merit in the departmental examinations and the remaining 50% by E.D.As partly on the basis of their seniority in service and partly on the basis of their merit in the departmental examination. Only after all such eligible E.D.As have been absorbed there will be avenue for direct recruitment of outsiders. Mr. Kureshi further submits that in view of the objections, the department has not been able to finalise the draft scheme.

12. The applicants are neither industrial workers nor would they be eligible in the normal course for recruitment as Postman in terms of the Recruitment Rules. There is, however, merit in the contention of Mr. Girish Patel that while taking a decision in this regard, the department has to keep in mind not only the provisions of the Recruitment Rules which in any case confers on the Government the power to relax the Rules in appropriate cases but also the observations of the Supreme Court and the Constitutional requirement particularly the right to livelihood enshrined in Article 21 of the Constitution. While the department has not admitted all the contentions of Mr. Girish Patel, we find that the basic premise that persons were engaged for work of a regular nature and not to meet any emergency situation or for completion of a project has remained unrebuted. The department also has engaged them for a number of years. Mr. Girish Patel has argued that the applicants had to report to the



department every day failing which their names will be removed from the panel. The department contends that it is not necessary for these persons to attend the Post office daily because they are called by sending messenger as and when the leave vacancy arises. However, the fact remains that as there will be a number of leave vacancies the applicants would have to be available for engagement when their services are required. We cannot, therefore, brush aside the submission that they are not able to seek work elsewhere and in any case in view of the acute problem of unemployment, they would hesitate to give up an opportunity they would be getting for employment in the Postal department. There is also force in the submission that continuing persons on daily wages or ad hoc basis for a number of years to man posts which are regular in nature is not proper and has been deprecated by the Supreme Court in a number of instances. As such it would not be equitable to dismiss the case of the applicants on the ground that they are not industrial workers and also as per the scheme of the Recruitment Rules they would not in ordinary course be recruited as Postman. It is therefore necessary to balance the claims of the applicants with those of the Extra departmental Agents who mainly rely on the provisions of the Recruitment Rules.

13. We are conscious of the fact that it is not open to the Tribunal to relax the provisions of the Recruitment Rules nor it is open to us to

direct the department to relax the same. However, in the facts and circumstances of the case we hold that it is necessary for the department to find an equitable solution to this problem by considering invoking the relaxation of clause.

The fact that the department prepared a draft scheme shows they ~~xxx~~ are also seized of the need to find a just and ~~xx~~ a fair solution to the problem.

14. Mr. Kureshi the learned Standing Counsel makes available a copy of the draft scheme ~~which was~~ ~~the~~ which was originally forwarded to the Court as also to Mr. Pathak. This is taken on record in OA/524/89. Some of the salient features of the scheme are that those applicants who possess the minimum educational qualification and who were presently working as outsiders may be allowed to appear in the Postman examination and if they pass the examination, their services may be regularised as Postman. If they had not passed such examination, they would be discharged by giving one month

notice but however may be considered for the post of E.D. as if they are willing to work at the place where there is a vacancy. Those applicants who do not possess prescribed qualification S.S.C. for Postman cadre but having Standard VIII passed qualification and who are in service at present may be taken up gradually in Group D posts against the available vacancies but they will have to appear and pass the prescribed literacy test. As regards the examination for appointment the applicants who are educationally

qualified shall be permitted to appear in the examination and have to compete with other candidates. The draft scheme states that 50% of the vacancies from direct recruitment quota will be made available exclusively for them. There is also a stipulation that only those who have currently been registered in employment exchange will be allowed to appear in the said examination. As regards Group D posts, it is stated that the department will hold a literacy test within six months from the date of the order. The scheme further says that those who qualify in the examination will rank junior to all and will not have any claim for past service. It also emphasises that there will be no relaxation of the educational qualification.



Mr. Pathak after going through the draft scheme submits that the department should finalise the scheme to look after the genuine and legitimate interests of the applicants. He also suggests that some improvements in the scheme, namely, that more than one chance should be given to clear the examination and that in the case of those who have worked for long, minimum educational qualification should not be insisted upon. He also suggests that on regularisation 50% of the service rendered earlier should count for pension on the analogy of the practice followed for the casual labourers.

15. In the facts and circumstances of the case brought out above in considerable detail, we direct

the department to take a decision on the finalisation of the scheme after taking into account the representations given by the E.D. Agents and also the suggestions given by Mr. Pathak keeping in view the provisions of Rule 5 of the Recruitment Rules within three months from the date of receipt of a copy of this order and to take whatever steps may be called for to give effect to the decision.

While taking this decision, they will take into account the interests of not only such of the applicants who have obtained a stay against the termination of their service but also of others in the Gujarat Circle who are similarly situated and had worked for a number of years but whose services might not be be continued at present in the absence of any stay from the Tribunal . Pending completion of the above exercise the services of such of the applicants who are working at present, shall not be terminated.

16. With the above observations the O.As are finally disposed of without any orders as to costs.

Sd/-
(T.N.Bhat)
Member (J)

यार करनेवाला *jealaf*
Prepared by: 20/10/97

निवारी पात्र
Composed by: RBC
20/10/97

Sd/-
(V.Ramakrishnan)
Vice Chairman

pmr

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