

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 414 /90 199
TXXX No.

DATE OF DECISION 27.2.91

C.Ramachandran Nair Applicant (s)

M.Rajasekharan Nair Advocate for the Applicant (s)

Versus

Telecom District Manager, Respondent (s)
Thiruvananthapuram and 2 others

Mrs.K.B.Subhagamani,ACGSC(R1 to 3) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N.DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *W*
4. To be circulated to all Benches of the Tribunal? *W*

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 28.5.1990 the applicant who has been working as a casual Driver in the office of the Divisional Engineer, Optical Fibre Project under the Telecom District Manager, Trivandrum has prayed that he should be declared to be entitled to regularisation as Driver from 1985 and that the respondents be directed to reconsider his case of regularisation in the department as a Driver or in any other equivalent category taking into account his qualification and service put in as a casual labourer. His further prayer is that the respondents be directed to reconsider his application for the post of Driver in response to the notice of direct recruitment at Annexure-III by which applications were invited from amongst casual mazdoors for recruitment to the cadre of Drivers. The brief facts of the case are as follows.

2. The applicant has been working as a casual Driver in ^{the} Optical Fibre Project, Trivandrum from 16.11.1988. According to him he was first appointed as casual mazdoor on 10.5.1982 and worked for 1100 days and thereafter as casual Driver upto 15.11.1988 for 1048 days. Thereafter

also he is working as casual Driver. He is being paid monthly salary on the basis of daily wages. His grievance is that in spite of the direction of the Supreme Court he has not yet been regularised, but merely given a temporary status as casual mazdoor in accordance with the order at Annexure-I overlooking his qualifications of a regular Driver. He possesses a valid driving licence for light and heavy motor vehicles, has four years experience in driving and is educationally qualified having passed the 7th Standard. His representation dated 7.11.1989 for being regularised as casual Driver was rejected by the order dated 12.1.1990 at Annexure-II. In that annexure it was indicated that he cannot be considered for the post of Driver in the direct recruitment quota as he had crossed 33 years of age. He was advised to apply for the post of Driver against Departmental quota subject to his fulfilling the specified Recruitment Rules only after he gets regularised against Group D post and not in his present capacity as a casual mazdoor with temporary status. According to the applicant he applied for the post of Driver but was informed that his application will not be considered. According to the applicant he is entitled to be considered for the post of Driver in accordance with the Ministry of Home affairs Office Memoranda dated 12.2.69 at Annexure IV and 16.2.1961 at Annexure-V.

2. According to the respondents the post of Driver is a Group C post for which statutory Recruitment Rules have to be complied with. The applicant along with a number of casual mazdoors who possessed valid driving licences were tested and included in the panel dated 2.11.1988 (Annexure R2(a) for being utilised as casual Drivers as and when required for short term vacancies. The applicant has been continuing as a casual mazdoor with temporary status and while doing the duty as a casual Driver he was given additional wages. The respondents have denied that any direction has been given by the Supreme Court to regularise all casual mazdoors in Group D establishment in accordance with the order dated 18.11.1990 at Annexure R2(b). All casual mazdoors who were in service on 1.4.80 and had completed seven years of service as on 31.3.87 were regularised as Group D regular employees. The applicant's application

for grant of temporary status at Annexure R2(c) was considered and he was granted the status of temporary mazdoor with effect from 1.10.89 in accordance with the scheme at Annexure R2(d). The respondents have denied the applicant's averment that he had applied for the post of Driver in response to the notification dated 17.3.1990 as he did not fulfill the age limit condition. They have clarified that the orders of the Home Ministry at Annexures IV and V apply to regularisation of casual mazdoors in Group D posts and not to the post of Driver which is a Group C post. The applicant, according to the respondents, is age-barred so far as direct recruitment to the post of Driver is concerned and is not qualified for being regularised as he did not complete seven years of service as on 31.3.87. They have indicated that the applicant will be eligible to be considered for the post of Driver after he completes three years of service as a regular Group D employee provided he is within 40 years of age.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant, cannot, claim regularisation as Driver by virtue of his service as casual mazoor because the post of Driver is a Group C post whereas the service rendered by him as a casual worker was in Group D category, though after his empanelment on 2.11.88 (Annexure R2(a) he as a casual mazdoor was being utilised as a casual Driver with additional wages. The scheme of grant of temporary status and regularisation promulgated on 7.11.89 (Annexure R2(d)) contemplates regularisation only in Group D cadre. In that scheme there is a provision of "age relaxation equivalent to the period for which they had worked continuously as casual labour for the purposes of the age limits prescribed for appointment to the Group D cadre, if required". Even if we extend the benefit of this principle of age relaxation to the applicant for regularisation through direct recruitment as Driver, the applicant will get an age relaxation of only 1048 days according to his own showing upto 15.11.88 and a further relaxation of 592 days from 16.11.88 to 1.7.90. On 1.7.90, in accordance with the Recruitment Rules and notice at Annexure-III his age should not be more than 28 years. By the aforesaid principle he will get an age relaxation of only 1640 days whereas since he was 33 years of age when he filed

this application dated 28.5.90 he would need an age relaxation of at least 5 years i.e., 1825 days to be eligible for direct recruitment as a Driver. Thus by deducting the period of service rendered by him as casual Driver from his age as on 1.7.90, he will be ~~above~~ ^{above} 28 years of age. Thus the benefit of casual service as Driver would not make him eligible and he would continue to be overaged for direct recruitment as a Driver. He cannot in any case seek age relaxation to the extent he was working as a casual mazdoor for 1200 days before he started working as a casual Driver.

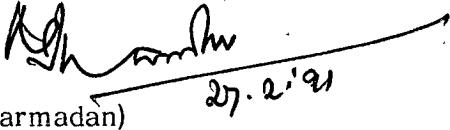
4. The only avenue open to him for regularisation is in Group D cadre. In accordance with the scheme of regularisation of casual labour in Group D cadre as at Annexure R2(d) the applicant along with other casual labourers who had rendered a continuous service of one year have been given temporary status. For regularisation in Group D vacancies all the vacancies of Group D for direct recruitment have been reserved for the regularisation of casual labourers and "outside recruitment for filling up the vacancies in Group D will be permitted only under the conditions when eligible casual labourers are not available".

5. So much so is good, but by the further letter of Department of Communications dated 18.11.90 at Annexure R2(b) "only those casual labourers/part time casual labourers who have rendered 7 years service as on 31.3.87 i.e., who have been serving this department since or prior to 1.4.80 are to be regularised against these posts". The applicant who has been serving as casual labourer with effect from 10.5.1982 has been excluded from the scheme of regularisation because he was a post-1980 employee. We do not see much rationale in fixing a deadline of 1.4.80 for regularisation. In Daily Rated Casual Labour of P&T Department v. Union of India and others, AIR 1987 SC 2342 the Supreme Court directed the respondents as follows:-

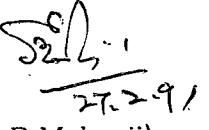
"We, therefore, direct the respondents to prepare a scheme on a rational basis for absorbing as far as possible the casual labourers who have been continuously working for more than one year in the Posts and Telegraphs Department."

The directions of the Supreme Court was not to exclude those who had joined the department after 1.4.80. Only those who had rendered one year or less of casual service should have been excluded. It may be that the Department of Telecommunications are taking up this massive process of regularisation of casual labourers by stages. But that should not make them exclude those casual labourers who were employed after 1.4.80 when according to their scheme itself and the direction of the Supreme Court all casual labourers who had put in more than one year of service would be eligible for regularisation and till they are regularised they are to be given temporary status and no outside vacancy should be filled up except by regularising them. The respondents have in the counter affidavit stated that "all casual mazdoors who were in service as on 1.4.80 and have completed 7 years of service as on 31.3.87 were duly regularised as Group D regular employees....". It is, therefore, high time that they should take up the cases of other casual labourers who have been given temporary status and awaiting regularisation in the order of their seniority with reference to the number of days rendered as on 31.3.1987 irrespective of whether it is more or less than 7 years of service.

6. In the conspectus of facts and circumstances we allow this application only in part and direct the respondents to consider the applicant for regularisation in Group D cadre in accordance with the Casual Labourers (Grant of Temporary Status and Regularisation)Scheme promulgated on 7.11.1989(Annexure R2(d))strictly on the basis of his seniority vis-a-vis other casual labourers reckoned with reference to the number of days of service rendered as on 31.3.87 but without insisting upon completion of 7 years of service till that date. The applicant should be considered for appointment as a Driver against/vacancy in the promotion quota after he is regularised in Group D and remains otherwise eligible for such promotion. The first direction shall be complied with within a period of two months from the date of receipt of a copy of this judgment. The consequential and further direction shall also be complied with without any delay in accordance with law. There will be no order as to costs.


(N. Dharmadan)
Judicial Member

27.2.91


S.P. Mukerji
Vice Chairman

27.2.91