

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 422/91  
~~xxxxxx~~

xxx

DATE OF DECISION 14.10.1992.

Shri M.A. Balan Applicant (s)

M/s T.A. Rajan & Alexander  
Joseph Advocate for the Applicant (s)

Versus

Secretary, Ministry of Commu-  
nications & 4 others. Respondent (s)

Mr KA Cherian, ACGSC Advocate for the Respondent (s) 1&2.

CORAM :

The Hon'ble Mr. **SP Mukerji** - **Vice Chairman**  
&  
The Hon'ble Mr. **AV Haridasan** - **Judicial Member**

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant Shri MA Balan, working as a casual Driver in the MMS, Ernakulam, under the 2nd respondent has challenged the order dated 13.2.91 (Annexure A8) by which the 3rd respondent who was a Mailman in the RMS, Ernakulam Division, was promoted and posted as Driver in the MMS, Ernakulam and the order dated 7.3.91 (Annexure A9) by which respondents 4 & 5 were appointed as Drivers in the MMS, Ernakulam and has prayed that these

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orders may be quashed and that the 2nd respondent may be directed to regularise <sup>applicant's</sup> ~~the~~ services as a Driver in the MMS from the date of his initial engagement as casual Driver. The material averments in the application can be briefly stated as follows:-

2. The applicant who has studied upto SSLC and has a heavy vehicle driving licence with 4 years driving experience was being sponsored by the Employment Exchange and selected in a test and interview, appointed as a casual Driver in the MMS, Ernakulam with effect from 19.9.89. He is continuing as a casual Driver continuously thereafter. According to the instructions of the DG, P & T and the Post Master General, MMS is a separate recruiting unit and as such only those working in <sup>the</sup> ~~a~~ particular unit ~~alone~~ would be eligible for competing against the departmental quota in the cadre of Drivers, cleaners etc in that unit. The DG, P&T had on 21.8.87 issued a letter directing all the Heads of Circles to fill up the vacancies in the Mail Motor Service in accordance with the guidelines issued in the Finance Coordination letter dated 22.7.86. In the light of the directions contained in the judgement of the Hon'ble Supreme Court, reported in AIR 1987 SCC 2342, the Government of India, Department of Personnel & Training had issued an Office Memorandum dated 7.6.88 prescribing guidelines to be followed in the matter of recruitment of casual workers, their regularisation etc. The Director General of Posts had issued a memo clarifying that the semi-skilled/skilled

workers such as Drivers are to be regularised in the light of the instructions dated 7.7.1978<sup>and</sup> ~~that~~ recruitment against vacancies caused ~~by~~ promotion, retirement etc may be made from amongst the Drivers working on casual basis for more than one year in accordance with the provisions of the statutory recruitment rules. Therefore, the vacancies of Drivers caused due to promotion, retirement etc are to be filled from amongst the Drivers working on casual basis for more than one year. As there was a regular vacancy of Driver under the 2nd respondent and as the applicant had been working continuously for more than 240 days in a year, on 12.12.90 the applicant made a representation to the 2nd respondent to consider him for regular appointment to that post. Alleging that the 2nd respondent was bent upon appointing a casual Mail Peon by name Kurian against the existing vacancy, the applicant filed OA 1217/90 against the alleged proposal. In the reply statement filed by the 2nd respondent in that case, it was stated that there was no vacant post and for that reason there was no move to post anybody there. But by the impugned order at Annexure A8 dated 13.2.91, the 2nd respondent has promoted and posted the 3rd respondent a Mailman working in the RMS as a regular Driver. As the Mail Motor Service, Ernakulam is a separate and independent recruiting unit, the 3rd respondent has no right to be promoted and posted against the vacancy of Driver in the MMS. While so, two other

vacancies of Drivers arose in the MMS unit at Ernakulam. For filling up these two vacancies, the DPC was convened on 6.3.91. The applicant and respondents 4 & 5 were considered by the DPC for selection. A written test and practical test were held and the applicant had ~~failed~~ well. But the respondents 4 & 5 were selected and appointed by the impugned order at Annexure A9 and the applicant was not selected. The respondents 4 & 5 who were appointed on 2.5.90 and 1.9.90 respectively had not completed one year or 240 days of casual service and, therefore, in accordance with the instructions regarding appointment of Drivers on regularisation of casual Drivers issued by the DG, P&T, the respondents 4 & 5 were not eligible to be considered. As there are 21 posts of Drivers under the 2nd respondent,, 3 posts should go to the Scheduled Caste and one to the Scheduled Tribe candidates. As there are only two Drivers belonging to the SC, there is a shortfall of one SC Driver under the 2nd respondent. The applicant being a member of a SC while the respondent 4 & 5 are persons belonging to other communities, the applicant <sup>was</sup> ~~is~~ entitled to be appointed towards one of the reserved vacancies. The selection of respondents 4 & 5 and non-selection of the applicant was done without properly analysing the comparative merits of the candidates and was an act of ~~favouritism~~. As the applicant was initially appointed as a casual Driver after conducting a suitability test and as he has been performing the duties of the post satisfactorily, a further suitability test for the purpose

of regularisation was unnecessary. Even if the applicant had not acquired the qualifying standard, being a member of the SC, he ~~was~~ entitled to be selected by relaxing the qualifying standards and appointed to a reserved vacancy.

As the 3rd respondent was not entitled to be considered for appointment to a post of Driver in the MMS and as the respondents 4 & 5 were not qualified to be regularly absorbed under the scheme for regularisation of casual workers, the appointment of the respondents 3 to 5 and the refusal on the part of the respondents 1 & 2 to appoint the applicant, is arbitrary, illegal and unjustified. Hence, the applicant prays that the appointment of respondents 3 to 5 may be set aside and the respondent No.2 may be directed to regularise ~~the~~ applicant in service as Driver with effect from ~~the~~ initial date of his appointment as a casual Driver.

3. The respondents 1 & 2 in their reply statement have sought to justify ~~the~~ the selection and appointment of the 3rd respondent on the ground that in accordance with the provisions of the recruitment rules for recruitment of Drivers in the P&T Department, 50% of the vacancies has to be filled by transfer of persons holding Group C & D posts having three years regular service in the eligible cadre of the unit of recruitment and if no person eligible is available in the unit of recruitment, from among those in the other recruitment units in the same Telecom District/Telecommunication/Electrical Circle/Civil Circle and 50% by direct recruitment. As there was no eligible Group C or D employee ~~available~~

in the MMS, Ernakulam, the 3rd respondent who was working as Mailman <sup>RMS</sup> ~~in~~ was eligible was rightly appointed to fill the vacancy reserved for departmental candidate. Regarding the non-selection of the applicant and selection of the respondents 4 & 5, the respondents 1 & 2 have contended that as the departmental promotion committee did not find the applicant suitable and found the respondents 4 & 5 suitable on the recommendations of the DPC, the respondents 4 & 5 were selected and appointed. Regarding the claim of the applicant that one vacancy of Driver was available to be filled by a member of the SC, the stand taken in the reply statements filed by respondents 1 & 2 are ~~mutually~~ inconsistent. In the first statement it was contended that it was not a reserved vacancy and in the 2nd statement it has been contended that ~~a~~ vacancy was carried forward as the applicant was found unsuitable. The respondents have also contended that the applicant did not have continuous service as he had absented intermittently and that the performance of the applicant during the course of his casual service was not satisfactory as several accidents had occurred while he was driving the vehicle. It has further been contended that the applicant did not have the driving experience before his casual employment.

4. The applicant has in his rejoinder contended that he had 4 years' driving experience before his engagement on casual basis and that there is no truth in the allegation that his services were not satisfactory. He has also averred that the 4th respondent had caused major accident and yet

he had been preferred. The contention that the applicant was not found suitable for appointment has also been denied by him.

5. The respondents 3 & 5 have filed separate statements seeking to justify their selection and appointment. The 4th respondent though was served with notice did not appear.

6. By order dated 31.7.92, we had directed the respondents 1 & 2 to produce the proceedings of the DPC/Selection Committee on the basis of which orders at Annexure A8 and A9 were issued and by order dated 13.8.92 we had also directed them to furnish information regarding the fixation of qualifying marks for appointment to the post of Driver and to produce the mark-sheets of the applicant and the respondents 4 & 5 for the selection made on 6.3.91. The learned counsel for the respondents produced for our perusal the proceedings of the DPC dated 6.3.91 and submitted that no minimum qualifying marks for selection for the post of Driver had been prescribed and that mark-sheets were not being maintained.

7. We have heard the arguments of the counsel for the parties and have also carefully gone through the pleadings and documents on record as also the proceedings of the DPC.

8. The challenge against the selection and appointment of the 3rd respondent and that of the respondents 4 & 5 are on different grounds. The learned counsel for the applicant argued that the MMS being a separate and independent

recruiting unit, the appointment of the 3rd respondent who was serving with the RMS, Ernakulam, which is a separate unit, was illegal. To substantiate this contention, he invited our attention to the clarification issued by the Post Master General in his letter dated 16.2.88 (Annexure A3). In this letter, the PMG had clarified as follows:-

"Each MMS unit will be a separate recruiting unit and as such only those working in a particular MMS unit will be eligible for competing against departmental quota in the cadre of Drivers etc in that unit."

In the P&T Department (Motor, Jeep, Lorry and Staff Car Driver) Recruitment Rules, 1983 (Annexure R1(a)) in column 11 at NOTE:2, it is stated as follows:-

"If no suitable persons are available in the unit of recruitment eligible persons working in other unit of recruitment but within the same Telephone District or Telecommunication/Electrical Circle/Civil Circle shall be considered for recruitment by transfer, failing which by direct recruitment."

While the statutory recruitment rules provide for eligibility of persons in other recruitment units in the case of absence of eligible persons in the unit of recruitment, the clarification contained in Annexure A3 cannot supercede the statutory recruitment rules. The applicant being a casual Driver cannot claim to be a departmental candidate. According to the Recruitment Rules, if no suitable and eligible person working in the MMS was available towards the vacancy reserved for a departmental candidate, eligible and suitable persons from other units of MMS in the same Telecome District could be considered. It is in accordance with this provision in



the Recruitment Rules that the 3rd respondent was appointed as Driver by the impugned order at Annexure A8. Therefore, we are of the view that the applicant can have no grievance against the selection and appointment of the 3rd respondent.

9. Coming to the selection and appointment of the 4th and 5th respondents by the impugned order at Annexure A9, the case of the applicant is that the respondents 4 & 5 were engaged for the first time in the MMS only on 2.5.90 and 1.9.90 respectively and <sup>as</sup> ~~they~~ had not completed one year's service on 6.3.91, they were not eligible to be considered for regularisation. In this connection, the learned counsel for the applicant invited our attention to the circular dated 26.8.87 of the PMG issued to the DPs Cochin/Calicut, Manager, MMS, Ernakulam and SS POs, Trichur, enclosing a copy of the letter No.2-15/87-TV dated 21.8.87 from DDG (M&TS) (Annexure A4), ~~to~~ the letter No.45-60/88-SPB-I dated 7.7.88 from the Ministry of Communications, Deptt of Posts, New Delhi, enclosing a copy of the OM No.49014/2/86-Estt (C) dated 7.6.88 of the Department of Personnel & Training (Annexure A5) and to the letter ~~of~~ the Director General of Posts clarifying that unskilled/skilled workers such as Drivers are required to be regularised in the light of the instructions dated 7.7.88 and that recruitment against vacancies caused due to promotion, retirement etc ~~was~~ to be made from amongst persons working as casual Drivers for more than one year in accordance with the provisions of the Recruitment Rules (Annexure A6).

In the letter dated 26.8.87, the PMG had stated as follows:-

"Vacancies available in the MMS units may be filled up as per instructions contained in the DG's communication. While absorbing casual mazdoors working as Mechanics, Cleaners, Drivers, it should be ensured that they have been recruited through Employment Exchange. Their selection for regular cadres should be done by the prescribed departmental selection committees."

In the letter of the Director General, Department of Posts, No.2-15/87-MV dated 21.8.87 communicated along with the letter of the PMG dated 26.8.87 it is mentioned as follows:-

"The General Secretary of All India RMS and MMS Employees Union Class III under item 4(c) of the Charter of Demands has requested for absorption of casual workers in MMS and further brought to the notice of this office that there are hundreds of drivers, mechanics, cleaners working in various MMS Units in the country for several years on daily wages and desired that they should be absorbed in the available vacancies early. In this connection, you are requested to kindly take immediate action to fill these vacant posts of MMS except Carpenter under your control, if not already done, and absorb the casual workers, if any, working in the unit against the post lying vacant arising out of promotion, retirement, death, resignation, dismissal/removal or deputation provided those daily wages workers have come through Employment Exchange and duly selected by the Recruitment Board of the respective cadre and also after observing pre-appointment formalities and result intimated within two months time."

In the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training OM No.F.49014/2/86-Estt(C) dated 7th June, 1988, it has been mentioned that regularisation of services of the casual workers should continue in accordance with the instructions issued by the Department earlier in that regard. In the letter regarding absorption of casual labourers in the light of Hon'ble Supreme Court's judgement, the DG, P&T has given the following clarification in Annexure A6:-

"Some of the Circles have asked for clarification whether the semi-skilled/skilled workers such as drivers etc are also required to be regularised in the light of the above instructions and Supreme Court judgement. In this connection, it is clarified that review in such cadres may also be carried out as stipulated in the instructions dated 7.7.88. After carrying out review, the proposals may be sent to the Directorate for creating justified posts to HE section of Directorate. However, it is to be ensured that drivers etc are not engaged on casual basis indefinitely.

Recruitment against the vacancies caused due to promotion, retirement etc may be made from amongst the drivers working on casual basis for more than one year and in accordance with the provision of statutory recruitment rules."

It is evident from Annexure A4 to A6 that in filling up posts in the semi-skilled/skilled category like Cleaners, Drivers etc., the casual mazdoors working continuously have to be considered for absorption. Admittedly, the applicant has been, on the date on which the DPC was held, namely 6.3.91, rendering service for more than ~~a~~ year. The respondents 4 & 5 had not completed the period of one year on 6.3.91. In accordance with the clarification issued by the Director General, Posts (Annexure A6), the vacancies caused due to promotion, retirement etc have to be filled from amongst persons working on casual basis for more than one year. Therefore, the respondents 1 & 2 and the DPC should not have considered the case of the respondents 4&5 since they had not completed the required service of one year on the date of the DPC. They should have considered the question of regularisation of the services of the applicant who had already completed a period of one year, in accordance with the Recruitment Rules. Further, on a perusal of the minutes of the proceedings of the DPC dated

6.3.91, we find that the Committee had recorded that the applicant, the only SC candidate, has failed to secure the minimum qualifying marks and the respondents 4&5 have qualified both in the literacy test and the driving test.

The answer papers of the applicant and the respondents 4 & 5 in the literacy test are available in the file. The 4th respondent is seen to have obtained 21 out of 25 marks and the 5th respondent,  $24\frac{1}{2}$  out of 25 marks, while the applicant has obtained  $12\frac{1}{2}$  out of 25 marks in the literacy test.

The applicant has, therefore, obtained 50% of the marks in the literacy test. But the marks awarded for driving test for any one of the candidates are not seen recorded anywhere in the proceedings of the Committee. From the

minutes of the DPC, there is no indication as to ~~what was~~ <sup>how</sup>

<sup>many</sup> ~~the~~ <sup>were</sup> marks awarded to the applicant and the respondents 4&5

<sup>in</sup> the driving test. It was also not recorded as to what

was the percentage of marks required for qualifying ~~in~~ the

selection test. To our <sup>query</sup> as to whether any minimum

qualifying marks were prescribed, the learned counsel for

the respondents 1&2, after consultation with the Department,

submitted that there was no instructions fixing any

qualifying marks. So, there is absolutely no basis or

foundation to say that the applicant had failed in the

selection. The cryptic observation of the Departmental

Promotion Committee without any data that the applicant

had failed to secure the minimum qualifying marks while

the applicant had obtained 50% marks in the literacy test and with no indication as to what <sup>were</sup> ~~was~~ the marks awarded to him in the driving test, cannot be considered as a dispassionate, impartial and fair assessment. The 2nd respondent was a member of the DPC.

10. First of all, the 2nd respondent has acted against the instructions contained in Annexure A6 in considering the respondents 4 & 5 who had not completed one year of service as casual mazdoor for the purpose of regularisation. Secondly, <sup>that</sup> ~~the~~ the applicant had been rendering service as Driver from 1989 onwards and he was first appointed as a casual Driver after holding a test are facts which are not specifically disputed by the respondents 1&2 in their reply statement. The contention raised in the reply statement of the respondents 1&2 that the services of the applicant as a casual Driver had not been satisfactory as he had caused many accidents, instead of showing that the applicant was incompetent to perform his duties as Driver, projects the mental attitude of the 2nd respondent towards the applicant. There is no case for the respondents that any action had been taken against the applicant for his ~~shortfalls~~. There is no case that he had ever been even warned for his inability to perform the duties of a Driver properly. It has come out in the pleadings that there were two litigations between the applicant and the Department previously. The argument of the learned counsel for the applicant that the applicant was discriminated against and was not selected on account of the ill-will for the reason that he had filed cases

before this Tribunal concerning his service cannot be considered as far-fetched in the light of what is revealed in the pleadings and from the proceedings of the DPC. We are of the view that the selection and appointment of respondents 4 & 5 who were not ripe for consideration on 6.3.91 and non-selection of the applicant on the ground that he did not secure the minimum qualifying marks while he had secured 50% marks in the literacy test <sup>for</sup> and while no minimum marks were prescribed, with no indication in the minutes of the DPC about the marks awarded for the driving test, is arbitrary, illegal and wholly unjustified.

11. In the conspectus of facts and circumstances, we allow the application in part, set aside the impugned order at Annexure A9 dated 7.3.1991 appointing the respondents 4 & 5 as Drivers in the Mail Motor Service, Ernakulam and direct the respondents 1 & 2 to appoint the applicant as Driver in the Mail Motor Service, Ernakulam unit on a regular basis with effect from the date on which the respondents 4 & 5 were appointed. Action on the above lines should be completed within a period of one month from the date of communication of a copy of this order.

12. There is no order as to costs.

  
( AV HARIDASAN )  
JUDICIAL MEMBER

  
( SP MUKERJI )  
VICE CHAIRMAN

14.10.92.

25-1-93  
(29)

CP(C)-13/93 in OA-422/91

Mr TA Rajan for petitioner  
Proxy counsel for respondents

The learned counsel for the petitioner states that orders regularising the petitioner have been issued and therefore with liberty to the petitioner to move appropriate legal forum in case the consequential benefits are not given to him, in accordance with law, the CP(C) may be closed. Accordingly, the CP(C) is closed on the above lines.

(AV Haridasan)  
J.M.

25.1-93

(SP Mukerji)  
V.C.